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# THE SCIENCE OF PUBLIC WELFARE

BY
ROBERT W. KELSO

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# PREFACE

This book undertakes to assemble, to analyze and to appraise the knowledge we now have regarding the broad question of the public welfare. Its purpose is to place before the teacher a convenient treatise in the teaching of social practice and the approach to the social sciences, and to afford the general reader a convenient guide to the rationale of modern public welfare and social work. It attempts to present a reasoned program of governmental action in furtherance of the public welfare. It aims to add one more contribution to that solid factual basis now slowly building beneath the teaching of social science.

The subject is presented from the point of view, not of the student of social theory, but rather from that of the worker in the field of public welfare. Principles and standards of action are presented as a challenge to thought. These standards the author believes to be sound. He will have accomplished high purpose if he can bring the wary and inquiring student either to agree with them or to improve upon them.

Although the public welfare is the concern of all social service undertakings, whether public or voluntary, this text is limited primarily to governmental functioning. Only in the chapter upon the relationship between public and private agencies is the voluntary society, as such, given more than passing consideration. But the basic standards of action are the same whatever be the auspices of the enterprise. Hence the reader who considers such chapters as those setting forth the principles of public relief or child care will find them equally applicable to the voluntary board of managers.

While the title does not limit consideration strictly to the United States, the topic is dealt with mainly from that point of view. It is only in the historical development of present-day practices that the experience of other countries has been offered.

The method of developing the subject is to present first the

philosophy of public welfare with a reasoned definition of just what we are to understand by that term throughout the treatise. This is followed by the broad historical background and the evolution of modern public welfare practice. What were the determining influences in that historical background? Four aspects are submitted, namely: church benevolences and public poor relief in Old England; the age of machinery and its effect upon social relations; changes in the concept of law and government; and the upgrowth of the science of psychology, which means in effect the discovery of the individual. It has been deemed particularly useful to such a treatise to present special chapters upon the law of charitable trusts; the charity franchise in law and practice; and the relationship between public and private agencies in public welfare service.

This evolution of the present state of things is followed by a series of chapters on the content of modern public welfare practice. Modern methods of administrative organization; poor relief; the care and treatment of law breakers; the insane; the feeble-minded; the care of dependent and neglected children; juvenile delinquency; and the public health—all represent convenient headings about which to group the program of the present day. The standards in each main sector of the field are set out separately for greater convenience of both student and teacher.

Although the book is designed for use in teaching, it is offered also to social workers, the charity director, and the interested citizen, as a helpful statement, within one set of covers, of the difficult riddle of community action in meeting and coping with specific phases of social problems.

R. W. K.

Boston, 1927.

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# THE SCIENCE OF PUBLIC WELFARE

# CHAPTER I

## PUBLIC WELFARE AND SOCIAL DEVELOPMENT

Benjamin Kidd, writing in the early nineties, begins his noted thesis on Social Evolution with the remark that "despite the great advances which science has made during the past century in almost every other direction, there is, it must be confessed, no science of human society properly so called." [1] In the four decades that have elapsed since Kidd, the discoveries and the inventions of science have multiplied with bewildering speed. We have added another dimension to human life since that recent day; yet this comment upon the science of human society still holds true to a large degree.

It is not that science has been laggard, nor yet that men have failed to observe keenly the phenomena of human contacts, for the story of science has been the story of unparalleled development and adaptation, and the record of the social sciences during the last half century has been remarkable. Sociology, economics, history, political science, social psychology, anthropology, and other branches of knowledge have developed until their story gives promise of being the distinguishing feature of American life. In the end they may set up that better coördinated science of society of which man stands so greatly in need.

A Science of Public Welfare Still Lacking—The present lack of a science of public welfare follows naturally upon the fact that "human society" embraces well nigh the totality of man's experience; therefore a science of social relationship must rest upon knowledge the most general and far-reaching and upon deductions the most profound. The science of public welfare, unless it be restricted arbitrarily for purposes of analysis and exposition, must turn out therefore to be the most general of all those systems of knowledge which we

[1] Kidd, Benjamin. *Social Evolution.*

call the sciences and in which for convenience we group all knowledge.

Social Service as the term is understood to-day sounds more in art than in science. It emphasizes the application of rule and practice. It presupposes the correctness of its rules and the sufficiency of that body of knowledge upon which they are based. Its greatest defect lies in its feverish attempt to execute rules or laws of public welfare the validity of which is too readily assumed and the reasoning of which is too dimly seen. It is true that sociology is seeking constantly to evolve a philosophy of society, and that psychology and psychiatry are groping for some solution of the riddle of personality; but down to the present, man and the secret of man remain as remote and far from attainment, yet alluring as the white tip of Tacoma. We are adding to our knowledge every day but it is early, from such data as we have at hand, to deduce the basic laws of human society and to seek to hypothecate thereon a philosophy of the public welfare. We can at best review our knowledge and verify the deductions already made therefrom.

Lack of Scientific Attitude in Social Work—A serious handicap to progress toward a science of public welfare is the lack of training and insight,—the almost universal absence of a scientific point of view among the workers in this new profession of social service. Devotion to a cause and constancy to an ideal may uphold the standard of quality to a degree, and will always produce noteworthy exceptions; but in the long run, in this necessitous world, economic pressure will force the lowest-paid enterprises to accept the poorest assistance. Hence it is that the pulpit is filled with doleful dullness, and social work as a life calling contains a high proportion who have failed in the competitive world of business and the other professions or are too timid and self-distrustful to venture beyond an activity where the general public is indifferent and where no identified taskmaster, risking his personal capital, stands forward with the lash. Of the personnel of democratic government as thus far practiced in America it is not too severe to say that it is organized mediocrity, producing a statesman

now and then, affording a steady crop of politicians and incompetents always.

But new professions grow slowly. It is but yesterday that surgery was a trade. Let the world but hold out the opportunity and the individual of caliber will arise to take it. In the literature of sociology, each year brings less from the pen of the paraphrastic candidate for the Ph.D. and more from the well grounded investigator in the human laboratory. The new profession of social work is seeking a scientific basis and with commendable enterprise is fast approaching that accomplishment.

The attempt will be made in this work to develop in as brief space as practicable the historical thread of development in our conception of public well-being and in our methods of fostering those values and combating those destructive forces which we find in our social life. Some review will be offered of those rules and precepts of social life which have come now to be accepted and an account given of the more important methods and processes which we have adopted in their applications.

But first what do we mean by a science? What do we mean by "public welfare"? And in what manner if any must these terms be limited for purposes of this analysis?

Science—A science is a body of knowledge. It may relate to any subject matter or phenomenon whatsoever, as for instance the science of radio-activity; of government; of human belief in the supernatural. But in order that it may claim the dignity of the name, it must be of such magnitude that a process of reasoning is able to deduce rules from it. A science in its common acceptance then is an important body of knowledge concerning some phenomenon of nature or of human experience, together with the reasoned deductions therefrom.

To borrow a simile from the loom, science represents the woof or binding cross thread of our study. Public welfare is our warp. It is made up of the running threads—the great substance of our topic—gathered together into one texture by those conclusions which we call our science. And because it is our subject matter we find it hard to define. Indeed persistent search in the treatises upon human relations fails to reveal a

single comprehensive definition available to the new student of social philosophy. It is, of course, easy to say that "public welfare" means the well-being of *the public* or the community. But what makes up the public and what do we mean by *well-being?*

THE PUBLIC—We learn from the sciences of ethnology and biology that man is a gregarious animal; that he has a social sense; tends to live in colonies; and uses his superior intellectual powers to rule the earth and all the forces of nature by pooling his individual strength in a more or less closely knit-up society, as do the ants and the bees but on a higher plane. These colonies or population swarms—human anthills—we call communities; and the people in them we designate by the short name *the public.* Thinking in larger units for purposes of government or the far-reaching influences of commerce we term the larger unit a community. We so speak of a state; of the nation; and even more rarely of the human race, thinking in some sense of a brotherhood of man. The public is that aggregation of individuals who go to make up the population swarm identified in the discussion at hand, either geographically, commercially, politically, for purposes of education, or by any other qualification desired. Thus we may refer to the public of Monhegan where, say, one hundred and twenty souls may spend the winter; or we may think of so large a community as Chicago in terms of local policing; or we may speak of the State of Pennsylvania as a public in discussing her old-age pension measure. We include the public of the entire United States in our comments upon the prohibition amendment and possibly of the whole civilized world as a single public when considering the world court. The public is the whole unit of population concerned in the subject under discussion.

PUBLIC WELL-BEING—Accepting this as our definition of the public or community, what can we say with certainty about the well-being of such a population swarm? What are the elements of well-being? Is the welfare of a people the most complete when they are individually happiest? When they are richest? When they are not indeed richest but rather farthest from poverty? When they are freest from oppression? When the greatest number have work? When their hours of toil are

fewest? When they have more children than they can bring up properly? *Human welfare* is that agar-agar in which grow the cultures of about all the "isms" that man has ever invented. It is that great Vega whither tends all progress. And it is the goal about which opinions differ most.

Your statesman defines well-being as that state of perfection in which the greatest good is accruing from national life to the greatest number of those who make up the nation. He is vague as to what he means by the term "greatest good." Your economist defines this *summum bonum* to mean the maximum production of wealth; the greatest guaranty of food, shelter and work; and the opportunity to reproduce with a rising birth rate.

Your socialist must see equality of outlook and privilege and, so far as possible, an equality of goods, society being to this end highly organized to protect the weak as well as the strong. To which proposition the eugenist objects, contending that the protection of the weak will not in the long run mean the greatest good. These various factions are declared worldly by the ecclesiastic who sees human well-being only under the dominance of religious creed and a more or less rigid code of morals.

Human society being the patient, the doctors disagree!

Aristotle defined a state as "a society of people joined together with their families and their children, to live well, for the sake of a perfect and an independent life." "The political (social) state," he adds, "is therefore founded, not for the purpose of men's merely living together, but for their living as men ought." [2] To him, therefore, the public welfare is to be advanced not merely by making it possible and practicable for men to mate and rear their young and associate together as a community. There must be such a philosophy of citizenship as will foster ethical principles of conduct. Individuals in society must not only live, they must live *as men ought.*

THE UTILITARIAN DEFINITION—And how ought men to live? Mill,[3] in his thesis on utilitarianism maintains that "actions are right in proportion as they tend to promote happi-

[2] Aristotle, Bk. III, Chap. VI, Books IV, V. (Walford Tr.)
[3] John Stuart Mill. *Utilitarianism,* p. 15.

ness, wrong as they tend to produce the reverse of happiness." By *happiness* he means "pleasure and the absence of pain." *Happiness* as here used means the happiness of all concerned.

"According to the greatest happiness principle," he goes on to say,[4] "the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality; the test of quality, and the rule for measuring it against quantity, being the preference felt by those who, in their opportunities or experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison."

To the utilitarian, doing as one would be done by, and loving one's neighbor as one's self, constitutes the ideal perfection. So Mill also discovers an ethical standard, an *other-mindedness,* attaching to the fullness of citizenship as a prerequisite to the public well-being.

The Idea of Individual Happiness Basic—This idea of individual happiness is basic in our human concept of progress. To be individually happy is the great aim of life. Rewards in a world to come would have no efficacy in persuading to virtuous conduct were it not for man's insatiable hunger for freedom from restraints; liberty of the person; freedom from bonds imposed either of man or of God; and so in all times man has sought to define his lifelong quest in terms of conduct and his personal relationship to other men and the material environment in which he must live. The Supreme Court of the United States has recently said, "Liberty denotes not merely freedom from bodily restraints, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized by the common law as essential to the orderly pursuit of happiness by free men."

So completely is human life a search for freedom from all

[4] John Stuart Mill. *Utilitarianism,* p. 26.

personal restraints that the students of practical ethics can say: " 'Do as you please so long as you don't eventually harm others,' is the only rule of ethics that has much life." [5] It is a quest which brings the individual into conflict at all points with the restrictions and limitations of social life, imposed upon him usually by government. Modern community life is a constant struggle between the whole people who are the sovereigns and the individual who in spite of his investiture of sovereignty must nevertheless be a subject as well where the living forms in a state of nature struggle for existence; mankind in his self-made ethical cosmos struggles for liberty and happiness.

The State and the Individual—However much he may be softening under a growing community consciousness, the modern citizen entertains a native distrust of government and holds a secret contempt for the law. Eloquent passages at arms in this conflict between the state and the individual flash out now and then, as where a crooked and thoroughly discredited soldier of fortune is elected governor of a state, or a long-sought conspirator, under indictment for notorious crimes, is made mayor of a city. Thus people who govern themselves spite themselves by childishly making it all the harder to govern.

It requires the optimist to peer into the future and predict better things. Benjamin Kidd professes to see in the on-march of society the steady growth of a spirit of other-mindedness and claims for it the development of that free play of forces within the community which produce the modern world. "And it tends," said he,[6] "to culminate in the condition of society in which there shall be no privileged classes, and in which all the excluded people shall be at last brought into the rivalry of life on a footing of equality of opportunity—the significance of the whole process consisting in its tendency to raise the rivalry of existence to the highest degree of efficiency as a cause of progress to which it has ever attained in the history of life."

But this view merits careful scrutiny. "If there is one thing plainer than another," says Huxley,[7] "it is that neither

[5] Charles Horton Cooley. *Social Organization*, p. 358.
[6] *Social Evolution*, p. 164.
[7] *Evolution and Ethics*, p. 58.

the pleasures nor the pains of life, in the merely animal world, are distributed according to desert"; to which Mill might reply, "Well and good. But the human cosmos is not an animal world. The ethical cosmos set up by reasoning man sets aside the natural struggle for existence"; and to this end he might quote Huxley in the same essay where he says, "The practice of that which is ethically best—what we call goodness or virtue —involves a course of conduct which, in all respects, is opposed to that which leads to success in the cosmic struggle for existence. In place of ruthless self-assertion it demands self-restraint; in place of thrusting aside or treading down, all competitors, it requires that the individual shall not merely respect, but shall help his fellows; its influence is directed, not so much to the survival of the fittest, as to the fitting of as many as possible to survive." [8]

Huxley further contributes to the point by saying, "I see no limit to the extent to which intelligence and will, guided by sound principles of investigation, and organized in common effort, may modify the conditions of existence, for a period longer than that now covered by history, and much may be done to change the nature of man himself." [9]

And if this future also is cast in the horoscope of mankind, Huxley draws a logical conclusion when he adds, "I deem it an essential condition of the realization of that hope that we should cast aside the notion that the escape from pain and sorrow is the proper object of life." [10]

Professor Patten avers that "historical evidence would seem to prove that a pure pleasure economy is an impossibility. Nation after nation has gone down when utilities instead of pains have become the supreme object of interest. In those regions where pleasure economy is possible, nation after nation has risen and fallen, without ever developing sufficient strength to resist the encroachment of enemies disciplined by a pain economy." [11]

[8] *Evolution and Ethics*, p. 81.
[9] *Idem*, p. 85.
[10] *Idem*, p. 86.
[11] *Annals of the Amer. Acad. Pol. and Soc. Sc.*, 1896, Ch. IV, "The Theory of Social Forces."

And in the shadow of this foreboding, he goes on to say that "without a conscious departure from the old ideals of state, morality and religion, there has been a gradual substitution of certain ideals and impulses of a pleasure economy, until now all of our leading concepts are held in a dual form." [12]

Hope is the great preserver of the human heart. Man has an abiding faith in his own works. He may not know whither his vaunted civilization leads him, but he believes that it spells progress. Hence he is not permanently disheartened by the apparent lack of accord between his self-made order of life and the cosmic process of nature. For such antagonism there appears to be. In order to understand the true relationship between the individual and the society of which he is a molecule it is necessary to explore more particularly the nature of human society, especially in comparison with the natural process of evolution.

Human Society vs. Natural Cosmos—In what way shall we be able to identify human progress as a thing different or apart from the evolution of other living things? Is it not the fact that human progress, as nature sees it, is only a painful march through countless generations toward complexity of structure and the maximum of variation in the species; and that human society with its governments, its art, its literature, its morals, is but an excrescence on the surface of that evolving course,—an exotic, sustained in artificial solution, beset by diseases, refusing to build up natural immunities, recalcitrant to natural lines of least resistance, wholly renegade as to the usual course of nature, presumptuous in that man turns his own knowledge of the forces of nature directly against her and seeks to carve out his destiny for himself in contrast with the obedient and supine oyster in his native bed at Cotuit?

The biologist can show that the development of man rests squarely upon the same two fundamentals which are at the bottom of evolution in all living things, namely, variation in the species and the tendency to reproduce beyond the limit of means of subsistence. Further it is demonstrated that human society as far as it is effective is a substitute for the struggle

[12] *Idem.*

for existence. It takes the place of struggle by ordering the conduct of the individual, redistributing the means of subsistence, by combating disease, by quelling strife. Under its beneficent régime the weak are protected from the strong and hunger is virtually banished. Man thenceforth lives under a *state of art* in substitution for a *state of nature.*[13]

Where in a state of nature, epidemic disease would sweep in waves over the human population-swarm, weeding out those individuals least able to resist it, organized human society sets up medicine and sanitary engineering. Sewage is disposed of, milk is pasteurized, the sick are quarantined, the well are vaccinated, and shortly the ravages of epidemic disease are checked. So are the weak protected. Man wards off death and sickness from the cold by building himself shelters and producing artificial heat through his control of fire. Thus he not only equalizes ordinary temperatures, but extends the human habitat to the greater portion of the entire land surface of the globe. In this way also the weak are protected.

Divergent Paths of Human Society and Nature—In that fierce combat of the jungle in which each member of a species through the painful groping of ages develops for itself the means of offense such as fangs, horns, tremendous crushing power; or the means of defense such as swiftness in flight, protective coloring; man takes his place, learning to fashion material nature, setting up barriers against his enemies, learning to throw stones and to wield the club. And in time, through organized society, enemies, from the outside, are set at nought, and strife between human individuals, within, is denied. No longer shall the strong prevail against the weak. Henceforth there shall be no selective process by which the fittest to meet the conditions of the hour shall survive. Struggle is replaced by an adjustment of rights among men. Thus again are the weak held valid and saved from destruction.

In all the ways by which nature might claim her individual back into cosmic dust, society stands forward to say "no." The feeble-minded youth, victim of hereditary taint, is preserved from harm to which his poor judgment and his in-

[13] Huxley, T. H. *Evolution and Ethics,* p. 19.

capacity subject him. His parents are encouraged by public and private relief to breed more like him. The drunkard is saved from himself and protected from exposure. The raving maniac is held in confinement at great expense and every safeguard taken to prevent his suicide or self-injury. The illegitimate starveling, often suffering from venereal infection, is gathered from the hedgerow and nurtured with all the arts of medicine to protect its eyesight and to save its life; for society decrees that all men are born with equal opportunity in the eye of justice. So then are the feeble, the lame, the halt and the blind preserved against the dictates of the *state of nature* to satisfy the ethical principles set up by the *state of art.*

The Unguarded Tendency to Multiply Indefinitely —But in this usurpation of the usual course of nature, superior man has not reckoned with his host. He has done nothing to offset that basic principle of evolution, the tendency to multiply at a rapid rate indefinitely. Indeed, all that he has done has tended to encourage multiplication. He saves the weak where nature would cut them off. Hence he finds that the tendency of his species to multiply without limit is favored by his social organization. Wherefore he tends to increase rapidly to the limit of subsistence. And it is here that he meets the first pause in his artificial cosmos. For as soon as population advances beyond the means of subsistence, nature reclaims her own and the old struggle for bread returns. Like Huxley's garden,[14] the wall is then broken. The amarella gentian, winner in age-long war on the English downs, breaks through; the gorse strides in upon the sweetened soil and the exotics, tended and cultivated by the erstwhile gardener, are choked and smothered to death in their weakness. So does nature take back her human changeling. The wretched beggar drags himself about the streets; the sick lie untended; epidemic raises its ugly head; and swarms of humanity stand face to face with the alternative of emigration or death. As the waste places of the earth become taken up by human increase, migration comes more and more to mean war,—the fight for something to eat.

The more efficient the state of art which man thus creates,

[14] *Evolution and Ethics,* p. 17.

controlling the environment in which he lives, the more rapidly does he approach this impass where his house of cards tumbles about his head and he is plunged back again into the state of nature.

Hidden Dangers in the Social Order—And there is another grave reflection cast upon the worth of this man-made garden of man. If it be true, as seems to be incontestable on the biological evidence, that without the elements of variation, the tendency toward selection of more adaptable varieties and the capacity to multiply without limit, there would be no evolution of the human species; then the substitution of artificial society for the natural struggle for existence without bringing into that artifice a new selective agent to take the place of the natural selective process, means in effect that under the state of art man tends to stand still. His physique, his intelligence, his every attribute fostered and pruned by watchful nature, crushing the less favorable, saving the strong, the alert, the wise, the fore-thoughted, trying this variation and that until in the course of countless generations she evolves an individual fitted to face the struggle and win—these attributes are not put to the test in organized society where the artificial process is in operation.

So destructive is this omission to supply the artificial selective agent in the face of over-population which already impends, that civilized man is now breeding from his weakest stock and seeking by all means in his power to satisfy his ethical principles by denying the inexorable.

As society advances, as democracy and the leveling of classes goes on apace, the inferior human stock becomes more and more prolific and the superiors breed fewer and fewer, until it is a maxim of the modern state that "misery breeds population." The higher the standard of living, the smaller the families. Any removal of the economic restraint of hunger is followed immediately by an increase in immigration and in the birth rate, just as the removal of a dyke is followed by the inflowing of the sea. Population tends always to increase beyond the point of saturation where the land will no longer support it. Then, due to the struggle for place and sustenance, the birth rate falls and numbers become stationary, in spite of the ethical

standards of society to the contrary. At the moment when subsistence fails, nature steps in and claims her leadership again.

THE INDIVIDUAL VS. SOCIETY—It is the habit of the poet and theologian, the psychologist and historian, to say of man that his great mark of distinction is his power of reason. Yet we find the social philosopher saying that "there can never be found any sanction in individual reason for conduct in societies where the conditions of progress prevail," [15] and again, "the interests of the social organism and those of the individuals composing it at any time, are actually antagonistic; they can never be reconciled; they are inherently and necessarily irreconcilable." [16] It is but another way of saying that the human order and the eternal nature of things are at outs.

But we are busy with a definition of *well-being*. Would the greatest ultimate good for the struggling human swarm be advanced furthest by a selective birth rate, encouraging only the finest physical specimens and discouraging hereditary defects and physical weaklings? If only a definite maximum number can live anyway, should these not be the best? Would it not be humane to prevent the weakling rather than to allow the inexorable struggle for bread to shake him, hold him long in wretchedness, and finally cut him off in tragic death? Where is the man-made precept of such potency as to deny the justice of the case? If this struggle for the pleasures of life which we see all about us must, as population crowds upon itself, be supplanted eventually by the struggle for mere existence—if that struggle is inevitable; can we then say that the welfare of mankind is spelled out by securing for the greatest number of individuals the highest degree of social opportunity—a state of society in which all "shall be brought into the rivalry of life on a footing of equality of opportunity"? and if so, is mere opportunity enough? Nature herself provides that. The trouble is not so much in securing the opportunity; it lies in the struggle to take advantage of it; for here it is that the weak are surpassed by the strong and the fittest prevail.

This *advance* of human society we call progress *because we like it*, not because it is giving rise to a finer specimen of the

[15] Kidd, *Social Evolution*, p. 80.
[16] *Idem*, p. 78.

*genus homo*. Modern man is weaker physically than his prehistoric ancestors. The human intellect, enriched as it is with new facts and the constant polishing of our educational processes is no stronger in native capacity than the intellect of the Cro-Magnon. If we are breeding no better specimen, then in what consists our progress? Is it that we have by our joint efforts secured more of the comforts of life? Granted; but is it not true that we have also extended immeasurably our capacity for pain and mental suffering? What have we done to make the world happier that is not compensated for by an equal susceptibility to human misery? We have evolved an industrial system infinitely more efficient than anything the world has ever seen before. But we have also taken the ignorant, phlegmatic, plodding and happy cottager off his native glebe and away from his hearthstone where he has sat his evenings with his mate and his children and thrown him into the smoky, dirty, promiscuous upper tenement in an industrial population-swarm where his bedraggled mate toils to keep the semblance of home and his children scurry like rats about the gutter. Into his phlegmatic life has come an unnatural tour of gang labor, a nervousness and a worried wrinkling of the brow, soothed only by the excitement of commercialized entertainment sold to him at so much the hour. The old horizontal lines of rustic peace have changed for him to the shimmering vertical lines of a slum struggle for existence.

But what indeed is man's mission on this earth if, like the cockroach or the oyster, the last specimen is to be forever like the first, and æons of time shall leave no mark upon his sluggish brow? The very courage of the human heart ebbs at the thought of a world which contains nothing but nature's unending struggle for existence. Man in all ages has sought to find an *ultima Thule* for himself. In all times he has been religious. Through all his history he has struggled to control his own destiny. Yet it would be hard to show that he has improved either his physical being or his capacity for intelligence one atom in the long course of ages through which we now know him to have warred hourly against the forces of nature. His power of mental concentration seems to decline with his widening range of thought and action. His skill in the arts is not

greater than in that day some 7,000 years ago when an Egyptian carved the statue of Chephren with bronze tools out of diorite. Certainly not since a master touched the inanimate marble from which sprang the living Doripheros. Our theology is but a gathering together of the polytheistic fable, the folk lore and the mysticism of ancient and prehistoric man into a framework of monotheism, not so consonant with the knowledge of the universe which we hold to-day as was its forerunner of ancient times with the knowledge man then had of his surroundings.

With ever increasing rapidity in scientific discovery, revealing the temporary man-made quality of our long series of theologies, this same growing enlightenment is slowly but certainly proving the indelible religious quality of man and his need for an ethical plan of life. It is again the old conflict between a state of nature and a state of art. A great thinker [17] has called it the riddle of the Sphinx. So puzzling is it that the human mind is apt to give up the conundrum and turn to the solace of faith. That which man cannot explain for himself will all be explained for him at the proper time and in His own way by the Infinite. So does the perplexed mind ease itself.

No Satisfactory Definition of Human Progress—But nothing that man has ever discovered out of his worldly experience warrants such a retreat. The safer course is to recognize frankly the incompleteness of man's knowledge of the universe in which he finds himself and to assume that the Great Unknown is as fair quarry for scientific discovery as it is for the construction of hypothetical faiths. There is thus far no truly satisfactory definition of human progress; hence there can be no final assurance as to what constitutes human welfare. We know a great deal about it—as we know much about the riddle of life—but the riddle itself eludes us.

But however the philosophers may wrangle and the doctors disagree; whether man shall conquer nature or be submerged by her in that inexorable struggle of pain; whatever be the meaning of man's ineradicable faith in God; and wherever may be that *ultima Thule* of his progress on this minute planet—

[17] Thomas Huxley. Essay on *Social Diseases and Worse Remedies*, p. 29.

itself a speck in the vastness of a minor universe—let these considerations loom large as they may: man is here upon the earth; he lives in colonies; he finds his individual interests inextricably bound up with the interests of the whole; he is a social being; his joint welfare must be the great aim of his future. It is for this reason that the science of public welfare is basic in his philosophy of life.

Standing on this sterile promotory of reason we look out across the waste of human endeavor, dim with the inadequate light of scientific knowledge, befogged by irrational faiths—a dreary wilderness of doubt and uncertainty, yet tinged—yes, unmistakably tinged—with the gray streaks of a new dawn. It is the star Vega, shining through the immensity of the future. It is that goal whither the reason of man will carry him, and in which he will have directed his destiny to a maximum of happiness and a minimum of pain.

In such practicable definition as may be essayed as a guide in this study of the science of public welfare it is necessary to admit frankly the artificial nature of the man-made scheme of things and to find the individual within that ethical system of life which we call civilization, an ethical being, living by more than bread alone. As a member of society he has an increasing variety of relationship with other individuals. He has duties wherever he claims rights. He is under restraints wherever he calls for immunities. In order to discover his setting in the framework of organized society, it will be serviceable to examine more particularly the nature of that form of association among men which we call government.

Government—At mention of the term the average citizen calls to mind a large building with a dome, the seat of government offices; sees vast floor spaces dotted with desks at which clerks bend over letters or papers,—these the employees of the state. He sees battleships and soldiers and police in uniform. He thinks of post offices and stamps and mail carriers; of complicated tax blanks; of courts and defendants in the dock. All these are the detail of his vision of government. It is essentially a display of force, a picture of authority which it would be dangerous to oppose.

How did such authority ever come to be recognized? Let us suppose the earth uninhabited by man save for the Island of Monhegan, upon which we find a small number of humans making their living by catching fish and tilling the meager soil. They live in caves and rude shelters along the shore. Some are mated and have little ones.

Man is a gregarious animal. It is natural to him to gather in a pack or colony of his fellows. In our imagined Monhegan the inhabitants soon discover that there is not enough soil to give each person a truck patch and at any rate some must have poorer soil than others. Who shall receive the better piece?

Government and Regulation—They discover, too, that the fishing grounds are limited and of varying quality, so that some inhabitants must give way to others in the choice of the best. These preferences must be suffered or else personal strife must decide the issue. But if personal warfare is admitted Hans and Glave may kill Girth though Girth may well be the most powerful boatman among them. So they find that however much they may distrust or dislike each other, it is best for the safety of the whole colony that they come to some agreement as to the allotment of land and as to the choice of fisheries. And if Theodoric, who has no mate, disturbs the household of Glave, it might impair the chances of surviving the severe winter to allow Glave to kill him or be killed by him in combat as is the law of the jungle, thereby losing at least one strong man from the united strength.

Assuming our imagined denizens of Monhegan to be endowed with fair powers of reason, they must soon see that whatever threatens the life of the whole colony must be the enemy of each person in it. In the case of an enemy from without they will quickly realize this axiom. Soon they will extend their axiom to include destructive forces arising from within their colony. They could not afford to lose one strong man if by keeping him alive and active they could manage to get along peaceably together. At all cost the pack or colony must keep personal combat from breaking out and perhaps robbing them of their strength. The lowest savage tribes acknowledge no government either human or divine, yet they band together

and in course of time develop a rude structure of government by common consent. The first laws among men have invariably been directed to preventing private combat.[18]

But such a colony must soon come to extend this primitive reasoning beyond the question of life or death of the group. They would begin to see that whatever was plainly making a large number of individuals unhappy or was otherwise threatening the welfare of the whole must be to the disadvantage of each person on the island.

And so by this process a form of association or of understanding would grow up at Monhegan by which the conduct of the individual and of groups of individuals or of the whole colony would be regulated under given sets of circumstances. Theodoric might have to agree to keep away from Glave's fireside and even to give Glave some of his store of lobster traps as compensation for the harm he has done him. Hans and Glave might be given the choice fishing ground by common consent but in return for a payment of a certain number of pounds of scrod into the common store of the colony which forms their food reserve through the bitterest days of the winter.

The Safety, Health, Wealth and Happiness of the Individual—Thus would grow up a process of regulating the conduct of each inhabitant by the insistence of all his fellows in such manner as, in the opinion of the whole, would best conduce to the safety, health, wealth and happiness of the greatest number. Beginning with measures designed merely to keep the peace by quieting private quarrels, they would soon begin to make rules for the protection of their society as a whole. While numbers were small there would be no occasion for setting up special machinery for carrying out this general will or even for giving the process a name. Individuals could remember and tradition recall those things which were approved and those which were taboo. But as generation followed generation and the colony became too numerous to find sustenance in the soil of Monhegan and in the adjacent waters, the adventurous would go to the mainland. A population-swarm

[18] See A. Cleveland Hall: *Crime and Its Relation to Social Progress;* Pound: *Spirit of the Common Law.*

would thus develop in which the occasions for the exercise of the general will would be greatly multiplied and the need would be vastly more frequent for determining what acts and what new regulations were really conducive to the greatest good of the greatest number. As time went by and numbers increased it would become necessary to appoint some one or more of the members of the community to look after these special matters of community will and its enforcement.

This association of all the persons in the colony by which they regulate their common affairs is their government, and the persons whom they appoint to take charge of all those matters of association are the chosen officers of government.

Of course this imagined colony at Monhegan would be a crude illustration of the actual evolution of human government as history has revealed it, yet it contains the essentials of that growth. Its presentation is not unmindful of the fact that society was kin-organized before it was politically organized and that the family was first metronymic. It seeks only to point out the essentials of that form of association among men which we know by the generic term government.

Government Defined—Government then is an association of all the persons in the community for the purpose of serving the general good by keeping the peace among its members, protecting the entire group from foreign encroachment or invasion and carrying out the general will in the performance of such services as by common desire are held to be conducive to the public welfare.

Obviously then, the welfare of such a public or community as here defined must include at least three major qualities. First, it must contain the idea of justice, a term which embodies the philosopher's thesis of equal opportunity in the rivalry of life, and is in our minds indelibly bound up in the idea of keeping the peace. Second, it must afford to the individual the greatest freedom of action commensurate with a similar degree of freedom in others. Third, it must presuppose such a state of society as will encourage the better physical and mental condition of the whole people, not only through efforts to prevent disease but also through such measures as may be

consonant with prevailing ethical principles to discourage bad heredity and to encourage better human stock.

DEFINITION OF PUBLIC WELFARE—Public Welfare, as used in this study, will be taken to mean that objective in social service which affords to the individual the highest degree of freedom of thought and action commensurate with the like privileges in his fellows; which holds out to him an equal opportunity to secure for himself and for his dependents the advantages of place, property and power which conduce to his happiness, his contentment, and the necessities of his existence; and yet which affords to society collectively the continuing opportunity to live at peace, functioning as the fountain of authority from which flow the means for attaining this welfare ideal.

In our discussion of the instruments and methods used to attain this ideal a distinction will be drawn between those enterprises conducted by the whole people through the agency of their government, and those carried on by groups of individuals, volunteering out of their own property and effort or by means of the benevolence of others to serve society by advancing its welfare. For, though the aim of both methods is the same, and the science of the public welfare not separable between them, it is highly desirable that the term *Public Welfare,* whenever applied to the methodology of social work should *relate to efforts carried on by governmental agencies or in immediate substitution for them.* As a consequence of this reasoning the greater emphasis will be placed upon governmental enterprises in welfare service.

## FOR THE STIMULATION OF THOUGHT

1. Is it true that the growth of "other-mindedness," as Kidd asserts, is positive and tends to produce an ideal state of society? What phases of human experience can you point to which demonstrate the claim? Is it not equally plausible that altruism, and indeed the whole code of human morals, are reactions from man's selfish struggle for individual preferment? Does the individual, in fact, ever really recognize the interests of others unless he either is an imitator or considers such a course the best means of furthering his own selfish ends?

2. Mill, in his essay on *utilitarianism,* says, "According to the

greatest happiness principle, the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality; . . ."

"If there is one thing plainer than another," says Huxley, in his essay on *Evolution and Ethics*, "it is that neither the pleasures nor the pains of life, in the merely animal world, are distributed according to desert." And again, "I deem it an essential condition of the realization of that hope that we should cast aside the notion that the escape from pain and sorrow is the proper object of life."

Professor Patten avers, that "historical existence would seem to prove that a pure pleasure economy is an impossibility."

Are these views inconsistent? If so, can you reconcile them? Thinking over the content of your own experience in life what do you consider to be the sound course of reasoning?

3. Is it true that human society is inconsistent with Nature's evolutionary process? If so, how can it have permanence? If not, how do you explain the apparent inconsistencies? Define the phrases, "State of Nature," and "State of Art."

4. How do you explain the apparent paradox that "misery breeds population"?

5. How would you dispose of the eugenic proposal that mankind should establish a selective birth rate?

6. What are the three underlying concepts in the definition of public welfare?

## FOR FURTHER READING

Cooley, Charles Horton: *Social Organization.*
Dewey, J. and Tufts, J. H.: *Ethics.*
East, Edward M.: *Mankind at the Crossroads.*
Huxley, Thos. H.: *Evolution and Ethics.*
Kidd, Benjamin: *Social Evolution.*
Lecky, William E. H.: *History of European Morals.*
Mill, John Stuart: *Utilitarianism.*
Patten, Simon L.: *New Basis of Civilization.*
Seth, James: *A Study of Ethical Principles.*

## CHAPTER II

# CHURCH BENEVOLENCES AND PUBLIC POOR RELIEF IN OLD ENGLAND

Public welfare in the modern democracy has its definite background embodied in the church charities of the Middle Ages; in the legislation of ancient times against wanderers; in the efforts of past centuries to restrain the insane; and in that slowly growing sense of personal responsibility for the public good which is the real index of social progress. By 1601, the time of the great statute of Elizabeth which is popularly assumed, though incorrectly, to mark the beginning of the law of charities, the custom of establishing foundations and creating trusts for charitable uses had been long in use. The preamble of that statute, which is its only surviving feature, is but a recital of the several uses to which men had from time immemorial been accustomed to create charitable trusts and benevolences. Properly classified these uses were found to be educational, eleemosynary, religious or in relief of the burdens of government.

The Church the Early Instrument of Relief—Charity and relief of the poor was for ages the business of the church. The impulse to help others arose not out of the teachings of gregarious living, but as a tenet of the Christian religion. In the laws of Hammurabi and in the codes of other pagan peoples are no admonitions to sacrifice for others.[1] It was the Christian church that offered the positive doctrine that by charity and good works the apostle might lay up treasures

[1] See Robert F. Harper. *The Code of Hammurabi,* 1904. Stephen Haley Allen. *The Evolution of Governments and Laws,* 1916, pp. 1005-1066 (Laws of Manu). Thus the Code of Hammurabi (2250 B.C.) makes no mention of charity or charitable acts. The word "Love" occurs but once, and that only in connection with the inheritance of estates. The laws of Manu (880 B.C.) speak of alms, but evidently refer only to the feeding of priests and Brahmins. The concept of charity as a tenet of conduct has received its glorification from the Christian church.

in Heaven. He must give to the poor for the easement of his own soul. He might set up a chantry or a religious use designed to secure prayers for the peace of his soul.

Ancient Benevolences—In the ancient Court of Hustings for the four hundred years between 1258 and 1688 [2] thousands of wills were probated, exhibiting in perhaps half of the whole the gift of a specific bequest or of a residue to charitable and pious uses, all for the good of the giver's soul. No matter whether the deceased was a knight or a fishmonger, the size of the trust might vary but its intent was the same, an effort made fearfully and in the shadow of death to secure for the troubled soul the favor of the priesthood by adding to mortuary and other charges, some donation to the fabric of the church and the mercy of God by conferring upon Mother Church so much worldly pelf as would induce the authorities to bury the body of the testator in the church itself or on consecrated soil, and finally to obey the injunction of the spiritual hierarchy to give to the poor and thereby lay up treasure in Heaven. Thus we find throughout all these four centuries a constant and fruitful stream of testamentary giving in which family dependents receive often far less than the priory, the hospital or the parish poor. Few dared to die without buying their absolution from the all-powerful church. So compelling was the carefully fostered fear of eternal damnation that gifts to religious and charitable causes became almost a part of the usual form of wills. Many gifts made to the trade guilds were motivated in the same manner, for the craft guild of the Middle Ages was at bottom a kind of religious order. It invariably claimed its patron saint. It maintained its chaplain; looked after the spiritual interests of its craftsmen and carried on religious ceremonies for the souls of their dead. By the beginning of the fourteenth century the guilds had become powerful labor unions, so powerful that few if any workmen could practice the craft without membership.

Many gifts also, designated to the upkeep of bridges and ways, were at bottom conciliatory offerings for the easement of the soul. From the earliest times, bridges have borne a

[2] See Sharpe, Reginald R. (Ed.). *Calendar of Wills proved and Enrolled in the Court of Hustings, London, 1258-1688.* London, 1889-90.

quasi-religious character. The Pontifex, sacrificial priest of pagan Rome, now head of the Roman Catholic Church, is etymologically the bridge builder. So deeply ingrained in English thought was this veneration for the bridge that not even the religious house was exempt from tithe or contribution towards its upkeep. From all other obligations, save only that of praying for the souls of its benefactors, the religious establishment was forever exempt. The most important bridges had chapels upon them.

LONDON: 1258-1688—Examples of the testamentary practices of the pre-Elizabethan period, taken from the calendar of the Court of Hustings, are as follows:

"to be divided into three parts; one part to his wife; a second to his daughter; a third for the good of his own soul."

"To the Hospital of S. Bartholomew, London, four shillings; to the new hospital without Bissopesgate, seventeen houses and a certain shrubbery next to the land of the said hospital; to the church of S. Mary de Suwerk, half a mark rent in Candelwiccestrate."

"To the brethren of the Penance of Jesus Christ (an order of begging friars) a dove-cot with pigeons."

"Remainder for the good of his soul."

"Remainder to the nuns of Clerkenwell in perpetuity for the good of his soul."

"For the maintenance of London Bridge, on condition that the wardens of the same—provide a chantry for the good of his soul."

"Residue to be distributed among the poor."

"A house to be sold for charitable uses."

"To the new hospital without Bissopesgate for the maintenance of the poor."

"to the chapel founded in his fief of Walton in aid of the poor."

"To be divided into three parts, whereof one part to be devoted to masses, another to providing clothes and shoes for the poor, and third, to providing marriage portions for girls and for putting boys out to work within the City of London and not elsewhere."

"To the bishopric of Ely—in pure and perpetual alms."

"To the master and wardens of the Commonalty of the Mystery of Talughchaundelers of the City of London he leaves the reversion—and an annual rent of six shillings in the parish of

S. Michael, on condition they keep his obit for the good of his soul, the souls of Margaret, his late wife, Agnes his present wife, and John Chesham her former husband, in the church of S. Mary aforesaid, and distribute four quarters of coal annually among the poor of the parish in manner as directed."

"To a guild for the maintenance of lecturers to educate the members."

"£8. yearly rental to maintain a schoolmaster for a free grammar school in the Town of Blackerode."

The only discernible changes in this long lapse of time are the increasing wealth of the populace, toward the middle of the fifteenth century, and the greater detail with which the testator specified the disposition of his remains and the ceremonial benefits which the recipients of his bounty were to confer upon his soul. At no time appears a conception of the public weal, a vision of civic usefulness, or any attitude beyond the fear of hell and a consequent desire to atone for earthly sins by making material gifts to the guardians and protectors of the spiritual life.

No Public Relief in Earliest Times—During the great formative period, the temporal government had no legal share in the relief of the poor, the healing of the sick or the constructive protection of the public well-being. All these were the affair of the spiritual side of the government, the church, and so far as these affairs came within the purview of the law, they were recognized only in Chancery, which was the law of the church.

Down to the time of the Reformation, hospitals were almost invariably connected with a priory or other religious house. Tradition records that Æthelstan established the hospital of St. Peter at York in 937. Others are said to be even more remote. England, by the time of Elizabeth, contained more than 750 of these establishments; hospices, spitals, and other institutional foundations for the relief of sinners or persons sore afflicted. Many afforded refreshment to wayfarers and to pilgrims traveling in the crusades. Some two hundred of them were for lepers, of which there were many, both before and after the crusades.

Public Poor Relief in Old England—The slow beginnings of governmental assumption of relief functions in England are important because they reveal the growth of a civic point of view which led the settlers of America to turn naturally to the government for the relief of the sick and the destitute. We have seen that charity in early English life was deemed the peculiar province of the church. The wills of many thousands of dead Englishmen attest the piety commanded by Mother Church and her control over even the acquisitiveness of the individual. The government had no share in all this giving. It sanctioned the practice by holding such testamentary trusts to be legal. It looked upon the hospitals and religious houses as public benefits. Kings as well as humble churchmen founded them as acts of piety.

But abuses, many and grievous, crept into the management of the religious houses. Especially was this so where the trust supported one or more livings. The proprietors took the benefits and the poor received little. It was the ineffectiveness, the cold, cheerless lack of charity, in many of these works undoubtedly that led Francis Bacon, writing in the last decade of the sixteenth century, to say of them, "Glorious gifts and foundations are like sacrifices without salt; and but the painted sepulchers of alms, which soon will putrefy and corrupt inwardly." [3] For this reason and for other and graver considerations yet to be recounted, arising out of economic life, beggary grew in the fifteenth century to be a menace in England. From their efforts to suppress vagabondage, as from no other cause, the government of the towns and finally Parliament came to deal with the poor.

Statute of Laborers—The Statute of Laborers in 1351, passed in the year of the Black Death,[4] when laborers were scarce and wages on the increase, placed such restraint upon laborers that many fled to those districts where the new statute was less rigidly enforced. London in 1359 and again in 1375 forbade all able-bodied persons to beg. In 1388 Parliament passed still more stringent regulations upon the movement of

[3] *Essay on Riches.*
[4] 23 Edw. III, Cap. I.

laborers. In the reign of Henry VII the laws for the suppression of vagabondage were enacted. Nevertheless, numbers increased at an alarming rate.

Early in the reign of Henry VIII Thomas Harman, a gentleman of Kent,[5] wrote a description of tramps and vagabonds in which he estimated the whole number throughout the kingdom at not less than 10,000. They were the cause of much brigandage and pilfering.

London between 1514 and 1524 established a rule forbidding beggary. Public disgrace was visited upon the sturdy vagabond by placing the letter "V" upon his breast. With this decoration he was to be "dryven throughoute all Chepe with a basone rynging afore him." An office was created to be known as the "master and cheff avoyder and keeper out of this citie and the liberties of the same of all the mighty vagabunds and beggars, and all other suspecte persons, except all such as were uppon thym the badge of this city."

Break-up of the Feudal System—In this manner did the towns and Parliament attempt to suppress that which was an inevitable concomitant of the changes then going on in economic life. The breaking up of the feudal system threw numberless bands of retainers out of employment, whereupon they continued as bands of murderers, highwaymen and thieves. Power in those years was passing definitely from the lords, the leaders of men, to the merchants, the holders of wealth.

At the root of these social changes was the slow development of industry. Ever since the introduction of weaving from the Low Countries, in the reign of Edward III, the manufacture of cloth had been growing in importance. The demand for wool made sheep-raising more profitable than tillage. In this way were many laborers displaced and hordes of wanderers were added to the ranks of vagrancy by the enclosures.

A third contributing cause was the relative instability of the cloth industry. Swarms of the population depended upon it and were thrown out of employment when war interrupted their market or any cause, economic or political, intervened to

[5] Harman's, *Caveat for Cursetors* (1567). Cited by Ribton-Turner, pp. 71, 595.

slow down the work. In times of unemployment, of course, the army of tramps was greatly augmented.[6]

By the time of Henry VIII it was becoming apparent that little could be done by mere repression without taking some measures to identify and to relieve the meritorious poor among this band of sturdy beggars. The secular authority was therefore drawing nearer and nearer to a time when poor relief should become a recognized governmental service.

Closing of the Religious Houses by Henry VIII—In this situation the progress toward public relief was greatly hastened by the closing of the religious houses in 1536. In that year the pressure upon the authorities of the City of London was so great due to the additional hordes of idle wanderers released upon the highways, that they petitioned the king for the hospitals of S. Mary, S. Bartholomew and S. Thomas, and the new abbey at Tower Hill for stations in which to relieve the destitute and for punishing "sturdy beggars not wyllyng to labor." The king took no action, but ten years later, in 1546, granted two hospitals to the London authorities for the relief of the poor. In 1551 he added a third and in 1553 made over to the municipality the mansion house of Bridewell. With this step, London was launched for all time upon poor relief as a civic function.

Norwich set up a municipal hospital in 1565; and in 1570 created a new system of dealing with the poor. Having found by a survey that there were 2,000 beggars within the city limits, a half of whom were children, the Council appointed "Selectmen" to receive women, maidens and children "whose parents are not hable to pay for theyr learninge." These were to be so taught "as labore and learninge shall be easier than idleness."

York in 1578 raised two hundred pounds by public money to be matched with a like sum in private gifts for "settying the poor of this citie on worke." Lincoln at about the same time established a trade school at public expense.

The First Poor-law, 1572—Meantime, in 1572, came the first Parliamentary enactment for the relief of the poor and the

[6] See Ashley, W. J. *The Economic Organization of England,* p. 56.

first levy of public taxes for that purpose. This act created the office of "overseer of the poor," the parish almoner, who remains to this day the somewhat picturesque personification of older charity methods both in England and America.

In all the English communities the record of public attitude toward the dependent class throughout those formative decades was the same: first repression, taking form in the statute of laborers and the numerous provisions aimed at the suppression of vagrancy; second, recognition, through the licensing of wanderers to beg and the permission of government for voluntary efforts at teaching the young, helping the sick and giving alms to the poor; and third, the actual assumption by government of the duty of relieving the poor and all others in distress.

Throughout the first of these three periods the poor were recognized as the proper objects of private alms but were not seen as a responsibility of government. In the second stage the poor were given license to beg, but no constructive relief was offered. In the final period a public rate was established and public overseers of the poor created to relieve those in distress.

That this system of poor relief enacted in 1572 was intended and expected to solve the problem of vagrancy is revealed in the clause which condemns the vagrant to death as a felon; and this but three years after a search instituted by the Privy Council throughout the realm had discovered no less than 13,000 of these "masterless men."

By 1597 this newly acquired sense of civic responsibility for broken citizenship was ready for nation-wide expression. In that year appeared the first truly comprehensive law establishing a system of public poor relief. With some minor additions it was reënacted in 1601 and has remained in its main structure the poor law of England ever since.

These then are the several determiners of English policy with reference to poverty and distress. They explain why it was that in 1601 the slowly growing English practices in poor relief on the one hand, and the crystallizing philosophy of public recognition of private efforts in benevolences on the other, should have culminated in two notable statutes, the one

creating the finished system of public poor relief; the other codifying, in its famous preamble, the English law of charitable trusts.

The Two Great Statutes of Elizabeth—Less than a generation was to go by before the settlement of America took place and the transplanted Englishmen began to apply those customs and practices familiar to them in their native English towns. And though the colonies eventually broke away completely from the political control of the Mother Country, these two statutes of Elizabeth have exercised a profound influence in American poor relief and in the American law of charitable trusts. In Chapter VI, devoted to Charitable Trusts, will be found a description of the Elizabethan preamble mentioned above.

The Statute 43 Elizabeth C2, enacted in 1601, is the embodiment of the Elizabethan system of public poor relief. It identified the poor. It created relief officers and established their responsibilities. It did not take up the problem of legal settlement, place of abode, responsibility as between contending parishes, questions which caused so much trouble later on and became in New England what was perhaps the townsmen's chief topic of litigation throughout colonial times. There are more than 700 decisions of the Supreme Court of Massachusetts dealing with the single question of legal settlement for purposes of poor relief.

The dependent classes as recognized in this Statute of 1601 are as follows:

1. The children of parents unable to keep or care for them.
2. Adults with no means of support and no trade.
3. The lame.
4. The impotent.
5. The old.
6. The blind.
7. Inmates of public prisons.

These needy folk were to be relieved in sundry ways by the church wardens and two or more "substantial householders" of each parish acting as "overseers of the poor." The children might be set to work or apprenticed out to individuals, the

males until the age of 24, the females till 21 or marriage. The overseers might provide materials and equipment with which to give employment to the able-bodied poor. With the consent of the lord of the manor they might set up almshouses or cottages in vacant land for the housing and care of the poor. This statute conferred full power on the overseers to impose taxes for the support of their operations and gave them far-reaching authority to levy distress upon the householder's property in default of payment. The recalcitrant could be committed to the common jail and there kept without right of bail until payment.

Another feature of this model law is its provision for the support of dependents by relatives in the line of consanguinity up or down. This is the law of Massachusetts and of many other American states to-day, couched in almost the exact wording:

"The father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall—relieve and maintain every such poor person—"

In the Chapter on Poor Relief, where the history of the Modern American System is traced, may be found abundant illustrations of the tenacity of the time-honored methods already old when recognized by the Statute of Elizabeth. In its essentials, our public poor relief is the system of Elizabeth, made applicable by a few superficial changes to the new conditions.

## FOR THE STIMULATION OF THOUGHT

1. How did government finally come to deal with the relief of the poor in old England?
2. Why was it that prior to the enactment of the English poor law, in spite of numerous repressive laws, beggary and vagabondage steadily increased? Name three contributing causes.
3. What significance do you discover in the fact that poverty and beggary were first forced upon the attention of the civil authorities in the industrial centers of England, where there was most work, most industry, most wealth?

## FOR FURTHER READING

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## CHAPTER III

# THE AGE OF MACHINERY: THE EFFECT OF SCIENTIFIC DISCOVERY AND INVENTION UPON SOCIAL RELATIONS

The greatest commonplace upon the times is that times change. Not everywhere do they change with the same rapidity and not in all eras with uniform speed. In the Province of the Dalai Lama of Thibet or in that other oasis of calm in this turmoil of progress—the Kingdom of Castile—the days lengthen themselves into the seasons; the customs of yesterday are the practices of to-morrow, and, the age goes by without an epoch. Compared with Trafalgar Square or the junction of Fifth Avenue and Broadway, the bucolic domesticity of these regions forms a picture of unending peace. It is the vision of a jagged cubistic view of skyscrapers and mechanism set over against the dreaminess of a Millet.

But why? How is it that folk ways, local customs, styles of dress and adornment, the very methods of thought of men can be so disrupted in so short a time? It is the purpose of this chapter to point out the dependence of social relationships upon scientific discovery and invention. The content of the public well-being, while in the broadest sense it may be said to be founded upon basic and immutable conceptions of justice, of reverence for the Infinite, of the love of beauty, in its more tangible aspect is found to change rapidly.

Medieval England—If we but look backward into the beginnings of modern times, noting the major discoveries of science as we come on down the years, we shall see that this age we call modern times is but the record of scientific attainment. Man may not have made himself nobler; he may be no better as a physical specimen; his esthetic sense may be poorer even than it was; and we may for our present purpose concede that for all we can prove to the contrary neolithic man who lived in caves had as high an intelligence quotient as the present day

individual who manages great affairs and navigates the air. But with all our observations we shall see that man's relationship to his fellows—that is to say, human society—is a plastic condition which the scientific discoverer molds on his wheel, taking its shape at his whim and its decorations at his fancy. In medieval England, before the discovery of America and even throughout the fifteenth century until the age of Elizabeth, society found its great anchorage in the family out on the land, living a self-supporting, self-sufficient existence. The cottager tilled the soil which belonged to an over-lord, to whom the tenant owed military service and for whom he was often called upon to fight. His tillage was sufficient to support his household and his cattle. He sheared his own flock, from the fleece of which his women made yarn, and in turn the cloth with which all of them were clothed.

He had neighbors, whom he met at church, and with whom he labored in the fields. Annual fairs and various neighborhood celebrations gave him his recreation and formed almost all of his social contacts. Half serf though he was, this life afforded him a high degree of independence in matters of health, bodily activity, and mental range. He was not a slave to a process. His hours were his own. His wife and his children were with him constantly. There was a fireside group at his hearthstone. Such learning in books and such leadership in the development of character as his children enjoyed they got there.

In that day, too, commerce was limited almost wholly to luxuries—spices, tapestries, rich objects of the East for the church and the wealthy nobles of the West. Upon such a commerce the prestige of Genoa and Venice was founded. As there existed no great foreign markets for the handicraft of the English there was nothing resembling the constant trade and barter of the English ports of to-day.

Such a primitive culture stood little in need of extensive water-works, of great community enterprises in furtherance of the public health, or of vast undertakings in parks and recreational facilities. To be sure there were a few centers of population, but in the main the inhabitants were spread out over the land and urban groupings were rare since there was

no occasion for them. Then, too, numbers were not great. Down even to the time of the American Revolution there were but ten million inhabitants in the whole of Britain.

Beginnings of Factory System—But into this bucolic life came new elements in the form of disturbing inventions. Protestant refugees from Antwerp in 1585 had introduced the cotton industry into England. But spinning and weaving for two hundred years to come remained cottage industries carried on and controlled by the family group.

Then came Arkwright. In 1769 and in 1775 he patented a roller spinning frame to be worked by water power. From the moment of Arkwright's achievement, spinning began its transformation from home to factory.

The social significance of this change was far-reaching. To use water power, the factory must be located on streams, and to assemble workers conveniently in the factory the home had to be removed from the isolated village to the populous town located at a convenient water power spot on a stream. But the mere removal of the home was not the most alarming feature of the change. It now became practicable to manufacture in much greater quantity those textile fabrics which the rest of the world began to call for. By 1775 there were two million people in the American colonies. And now the means of quantity production were at hand. Hence it became profitable to feed the spinning and weaving industries with wool from English sheep, as well as with staple cotton from foreign shores. This demand soon made it more profitable to turn the indifferent tillage of the English midlands to grazing and pasturage. In such manner was ushered in the age of the enclosures. The cottager was thereby forced off the land where he had lived in partially free villenage for countless generations. Either he must go upon the highway as did a multitude of his kind, begging bread from monastery to monastery or he must herd into the towns and work for a wage in a manufacturing corral which we glorify by the name of factory. And with him must come his wife and his children. Indeed, as we shall see, the wife and the children were themselves principals in this pageant, the outcome of which is the modern urban world.

The populous towns now increased beyond their power to

feed themselves. The villages produced for the industrial center at prices constantly rising: but at the same time that the cost of living was going up, the peasant, displaced by the enclosures of his tillage for pasture, was without an adequate wage with which to meet it.

THE SPEENHAMLAND SYSTEM—It was at this point that one of the most vital social consequences of the industrial revolution occurred. To meet the laborer's distress, the English authorities, instead of developing a policy of economic rehabilitation as did the Danes, undertook to regulate wages by governmental authority. The first proposal was the establishment of a minimum wage. In May, 1795, the Berkshire magistrates met at Speenhamland to discuss proposals for regulating wages.[1] They adopted a resolution that where wages were insufficient they should be supplemented from taxes in accordance with a fixed scale. The system of supplementary doles thus set up went generally into practice so that by 1834 it covered practically the whole of England.

It began at once to produce the anti-social results that might have been expected. The laborer became a pauper dependent upon the alms of the overseers of the poor. Rioting broke out, all the more dreadful because it was the outcry of the hungry seeking bread. The truth was that a man could not get help from the overseers of the poor unless he was destitute and unless he got help from the overseers he could not get a job. It was this second element in the vicious circle that escaped the law-makers. Yet it was fairly obvious that no employer would pay full wages to a laborer when he could turn to another—or to the same one after his reduction to destitution—at a fraction of the same pay. It became the practice of the overseers in some districts to auction off the laborers every Saturday night, letting them out at 1s. 6d. to 2s. per week, while looking after their families as paupers. No course could have been better calculated to ruin the spirit of thrift and break the pride of independence of the commoner than this. To it Britain owes three centuries of mediocrity and ineffectiveness in her system of public poor relief. Its reverberations still echo in English life, for in the miners' strike of 1926 the outstanding

[1] Nicholls, Sir George. *History of the English Poor Law*, Vol. II, p. 137.

feature was the necessity of wholesale alms as a supplement to wages.

Another aggravation of social conditions resulting from new machinery in those early years was the increasing degradation of the hand-loom weavers after the power loom came in. Hordes of Irish immigrated into Lancashire where, because of the prevailing unemployment, they were unable to secure employment at anything but hand weaving. This branch of the textile manufacture soon became overcrowded. For a century the paupers of Lancashire have been mostly hand loomers and their descendants.

When the first cataclysm of economic forces was just at the point of motion, it received a powerful impetus from an invention the most far-reaching perhaps of all the discoveries of man in recorded time. In 1785 the ill-fed and sour-tempered James Watt brought out his steam engine with its separate condensing chamber, and Wilkinson found a way to bore its cylinders steam tight. The result was the superseding of hand and water power by steam.

With the steam engine was ushered in the true age of machinery. Almost at once the cotton and woolen industries began to expand with this greater facility for manufacture. The foundries overcame their handicap of painstaking and laborious hand processes by the use of steam-driven power. Mines, at the point of abandonment for lack of adequate pumping facilities, took on a new lease of life. It became practicable to manufacture cotton and woolen goods and to carry them in British bottoms to the Americas and to any port of the known world.

Slave Labor—Cheaper goods meant more goods and more goods meant more raw materials. This in turn enormously increased the demand for labor to meet which the captains of industry turned to two kinds of human slavery one at least of which still obtains to a large degree both in Europe and in the United States. The first was the trade in blacks from Africa; the second was the exploitation of women and children in factories especially the children of the very poor. English trade in African slaves began with Sir John Hawkins as early as 1564 and continued with increasing numbers and profit until

between 1680 and 1700 the total cargo in human chattels forced out of Africa by British shippers from the single port of Liverpool exceeded three hundred thousand. By 1789 England was maintaining a vast slave mart in Jamaica from which she supplied the Spanish West Indies. The treaty of Utrecht made England chief slave trader of the world.

In this manner a constant stream of labor was brought into the fields of the New World where raw materials for manufacture by the new machines were produced. In addition it increased the demand for clothing and other manufactures. The advantage to the new manufacturing processes was therefore doubled, by which fact British industry was rapidly accelerated. The resulting social changes were revolutionary.

Children Under the New Order—When spinning and weaving were cottage industries, the women did the spinning with their children helping in the subsidiary processes. The men did the weaving. This division of labor had grown with the experience of two centuries and more. The men carried the heavier labor and the children remained under the immediate watchfulness and direction of mother. The new machines completely overturned this system. In the new order men worked the spinning frames that had replaced the simple hand processes theretofore carried on by women. The looms were taken over by the women and the young men, while the children were employed in increasing numbers and with greater profit to the business in and about both processes. The constant labor of vast hordes of children became a necessary feature of the entire textile industry. Child labor in fact became the basis of a new economy.

The practice in England for centuries had been to keep pauper children at hard labor. The new industry was to them therefore no innovation. But the need of the workhouse for an outlet and of the factories for labor presented such a harmony of demand and supply that the two greatest shames of civilization soon came to be the black, bending in the fields of the New World, and the child, toiling in the factories of the old.[2]

In the early years of the nineteenth century when Watt's

[2] Hammond, J. and B. *The Rise of Modern Industry,* Ch. XII.

great invention of the steam engine was fully installed not only as the relentless driver of frame loom, pump and grinder but more important than this, had become itself the vast breeder and shaper of still newer machines, the pauper child of four and five was picking cotton waste from the factory floor. He went to work at five or six in the morning; had half an hour for breakfast and an hour at noon and completed the day's tour at seven or eight at night. A child so occupied might easily walk twenty miles in the course of a single day's work.

Because infancy could not stand such confinement and such exertion for long, most of these little folk through a merciful Providence died young.

Effect of New Industry on Society—The effect of the industrial revolution, so tremendously accelerated by steam power, upon the family as an institution, has created a new world. When the Kalmuks struck their tents, drove in their cattle, gathered their little ones and set off for the other side of the world they, nomads that they were, made less of a change in their manner of life, their opportunities for the protection and the nourishment of their young than did the peasants of England in the seventeenth and eighteenth centuries or the farmer of the United States in the last fifty years when they turned away from the quiet country life which held all the traditions of their past and stepped into the hurrying, ill-conditioned toil of the industrial city. The world of to-day is farther removed from the civilization of Elizabeth, in terms of social relationships, than was the age of Elizabeth with all its progress in art and literature from the world of Cheops.

In the new industrial centers of England humanity was crowded without safeguard for health or morals. Community consciousness, a very modern term to be sure, was unknown. In Manchester, for instance, in 1820, two hundred thousand inhabitants possessed not a single public garden. Their living quarters were little better than hovels. The population of Merthyr jumped from 7,700 in 1801 to 35,000 in 1841 at the close of which period the average expectancy of human life of its inhabitants is reported to have been eighteen years and two months. Man, from being a laborer under the rays of the healing sun, breathing the untainted air of the open spaces,

strolling under the familiar stars, plunged into a foul and smoke-begrimed atmosphere, sunless for him and starless, slave to a mechanical process which tended, and is still tending, to circumscribe his movements and consequently his thought to a few routine motions or even to a single motion repeated without ceasing.

The Cotton Gin—In the United States the invention of the cotton gin opened up a vast acreage to cotton growing, for with this machine it was practicable to handle cotton on a large scale. With the development of short staple cotton the interior region of the southern states became the scene of great activity in the extension of plantations and the increase in slave labor. The invention of the gin was perhaps the most serious factor among the causes of the American Civil War. With the coming of the railroads in 1825 transportation increased enormously. Towns and cities grew up as distributing centers and population began once more to readjust itself to the new knowledge.

Automatic Machines—Thus far we have considered the social results of the change from cottage and guild trades to the factory. In these latter days, especially in the United States, has arisen a monster broader shouldered, more forbidding, casting a more ominous shadow even than his Frankenstein, the steam engine. He is the "iron man," the automatic machine. This greatest leader and shaper of human economy is upsetting the customs and traditions of the human race so completely that future ages will in all probability look back to the last decade of the nineteenth century as a turning point in the evolution of man of dignity equal to the discovery of bronze and the passing of the stone age. The automatic machine is likely to change the conditions of life so markedly as to alter materially the definition of fitness for purposes of survival in man's eternal struggle for existence.

At the behest of the iron taskmaster a million blacks and half breeds come out of the south to work in the factories of the north. These are an outdoor strain dying rapidly of pulmonary diseases when kept indoors or cooped up in northern cities. At the same call the peasant of Europe crowds our immigration docks to the limit of his quota. He comes out of a background

of a thousand years of special cultural traits and folk customs to serve as an automaton pushing disks into one end of a mechanical process. This loadstone of the automatic machine, too, is drawing women in vast armies from their homes to the mills, while charitable day nurseries are struggling to look after their children for them. This great new "fool proof" tool is a leveler of labor both in supply and in wages.

In former times skill was a prerequisite to the successful artisan. It is said to require but three days on the average to train the worker for an automatic machine. At any rate, the preparation time is short, and so small is the demand upon the intelligence that "modern industry presents this phenomenon—the dullness of the mind—on a scale unequaled in extent, and to a degree unequaled in intensity, by anything on record in history." [3]

Automatic machinery makes life easier in that it has created still another refuge for the least competent, but in so doing it has reduced the hardships which have heretofore kept the weaker strains in the population down, thereby allowing them to increase with greater rapidity. Through the new mechanical man the marked tendency of the times is to lower the physical and mental level of the industrial group.

Fool-proof industry throws youth, male and female, into the mill together, starts them at wages as high perhaps as they will ever attain, however long they stay at it; puts money in their pockets in advance of the maturity of their character and sound judgment; levels the ablest worker to the grade of the poorest; rates each on the speed of his reaction time to the beckoning of levers rather than his ability to think straight; and, because of its absence of a skill requirement, places each worker in competition with each other worker, male and also female, over a large part of the surface of the globe. Thinking back to our peaceful family groups in the plowing, it has reduced home to a common roost, and so far mechanicalized social intercourse that leisure time activities are commercialized and sold at so much per hour, predetermining the kind and the amount of excitement necessary to offset the benumbing routine

[3] Arthur Pound, *The Iron Man in Industry*, 1922, p. 51.

of the day's labor. "The army of homeless, wifeless men and footloose women is growing," says Professor Arthur Pound; "the automatic tool has cut marriage knots as well as steel bands." [4]

Electricity—It is hard to look back upon the world of 1850, or of 1870, for that matter, and realize that it possessed no electrical machines. The social consequences of an invention like the telegraph and the telephone are hard to estimate. Towns have been connected by cheap rapid transit. Homes were connected by an instrument through which friends, business associates, tradesmen and their customers could converse without meeting. Time and space were appreciably reduced by this invention.

Already, however, the telephone and the electric generator are an old story. Discoveries much more startling have been made. In the field of chemistry alone more than two hundred new substances have been evolved. In the special branch of medical research many dreaded diseases have been mastered and some of them practically banished. Paralleling the wonders of electrical science has come the internal combustion engine with its direct offspring, the automobile and the aeroplane. Latterly, the power to communicate through wireless space, sending not only sound but vision as well, has well-nigh eliminated space and time from human affairs.

The Automobile—The automobile has opened the out-of-doors to city dwellers; has stimulated the love of outdoor activities and has made companionable leisure time activities a heavier factor in social welfare. At the same time it has greatly increased the opportunities for vice and crime.

So stupendous has been the development of these latter years in labor-saving devices and so numerous have been the discoveries of science that society is buffeted hither and thither by the demands for change. Man now lives in great population-swarms around the place of his industry. He builds great cities about a single manufacture and only lately has he begun to build with any appreciable degree of community consciousness.

[4] *The Iron Man in Industry*, p. 34.

Every important invention or discovery creates a new nation-wide industry or draws upon home life for more of its fireside time to be spent in the mill; or demands a movement of population from country to city; or places in man's hand a new power which does not reckon with existing law or custom. And man cannot disregard the call. He responds, as indeed he must, by readjusting himself to this new element in his environment. To that extent human relationships cease to be what they were before the invention and become something different. It is in this way that man shapes his course from age to age. Victim of his own inquisitive mind, he is forever prying into the secrets of nature and finding therein new things with which to advance himself. The science of public welfare is not intelligible without a full appreciation of the complete dependence of society at any given moment upon the state of scientific knowledge, changing with new knowledge and calling for new expedients forthwith in the furtherance of the common good.

## FOR THE STIMULATION OF THOUGHT

1. Why should governmental regulation of wages result in injury to the public welfare? In 1914 at the outset of a strike in the textile mills at Fall River, Mass., the state department was asked by the Union to provide support to the families of strikers who had not been previously dependent upon public relief and who were now destitute through loss of wages. Relief was refused on the ground that the strikers were not destitute within the meaning of the poor law and because the state, by acceding to the request, would be supporting and subsidizing one party to a strike. The strikers' children were in fact hungry; and the only alternative for the men was to give up their strike. Was the state's position sound?

2. Can you recall an instance, in a community in which you have lived, where new invention or the development of new machinery has created an important change in employment and in the conditions of living?

3. What is a residual occupation? How have social relations in Atlantic seaboard cities been affected by the supplanting of domestic service for women by work at the automatic machine?

4. Has the development of elaborate machine processes increased the amount of child labor in the making of artificial flowers, wreathes and like novelties?

## FOR FURTHER READING

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## CHAPTER IV

# CHANGES IN THE CONCEPT OF LAW AND GOVERNMENT

To the average social worker the law is a closed book; nor does he rate it of much importance. The slow processes of issuing warrants; allowing ample time for notice, for appeal, for the answering of charges; the right to object on technical grounds; the interminable mazes of the law of evidence; the principles of law themselves, and especially the statutes, are to him but a series of hindrances and dilatory pleas, interposed between him and his aim which he is satisfied is just. The new profession of social service is abysmally ignorant of the philosophy of the law and in consequence has at best a warped conception of the public welfare. In common with the average citizen, the social worker looks upon the statutes as the real law, and assumes, since they come from a "law-making body," that all law therefore is made by an artificial governmental machine.

The truth is that statute *law* is made up mostly of rules and regulations for the conduct of that public corporation which is the government; and can be called *law* only to the extent that it seeks to clarify and give greater certainty to rules and principles which already exist and have existed for long periods of time. The statute can at best set up an offer of rewards or punishments which establishes a motive for obeying the law. In this sense it may with reason be called *law;* but it is not the true substantive law; it is only a regulation regarding law which already exists.

Origin of the Substantive Law—What then is the law, that phenomenon which we find wherever we discover historical record? Who makes law? Who is subject to it? Why should it creep in wherever human beings live together in a common habitat? There is law in the jungle, among animals as well as men. Among primitive tribes, who appear to be

thousands of years behind the people of the United States in their development, law is found to be old and of an origin immemorial. Small wonder that many peoples look back into the dim reaches of their past and say in wonderment that the law must have come from God, since no man is known to have made it.

In the substantive law of any people—the law as found by judicial tribunals—may be seen exactly mirrored the culture of that people; their mode of life; their conception of the world about them; their idea of the Infinite; their conduct as individuals. And in the historical development of that law may be found faithfully recorded the growth of that people; their critical turning points in evolution; their transition from nomadic to pastoral; from pastoral to agricultural; from agricultural to industrial; and their departure from the open spaces to the crowded tenements of cities.

Law and Custom—The explanation is that law is custom, and custom is native to and of the essence of race culture. Custom is demonstrated safe conduct. It is the summation of individual judgment from generation to generation passed down by tradition through the ages.

Thinking back to the beginnings of human society, the individual redressed his wrongs by force—the force of his strong right arm. Hence before a man did anything in which his fellows might be somehow concerned, he thought carefully of the consequences. How far could he go without arousing the displeasure or hostility of his fellows? What acts would get him into a fight and what conduct would be approved as fair? What was the fair expectation of his fellows in any case? Gazing thus at the consequence, he felt his way, gauging the limits of his personal actions by a shrewd estimate of the consequences in terms of danger to himself.

Throughout the ages of pre-history this philosophy of human contacts and personal relations has been evolving into recognized practice or custom. Small wonder then that in the most primitive cultures known, customary control of conduct is found to be venerable and of origin already so ancient as to be mythical. Neither is it a marvel that the schemes of justice are so strikingly similar among the various and isolated races

of mankind. After all, man is of one species and his mind as well as his body is much the same the world over. It might be expected therefore that his activities of mind and body would approximate a single course in all essentials, varying only with the differences in environmental stimuli. The native Australian is amazingly like the resident of lower Manhattan in essential character; he is astonishingly different in environmental stimuli and in his reactions thereto.

Evolution of Law—From the trial of disputes by a contest of brute strength, man finally saw it to his advantage to lessen strife by compounding the injury into compensation for the damage—the payment of a thing of value to the injured party. This custom, however, required some peaceful determination of the disagreement. The expedient of arbitration was resorted to. A third person, usually a wise man of the tribe, was called upon to judge the dispute. But it was a slow growth from the pitched battle to the compensation plan. Finally the process of proving his case arrayed a number of friends and supporters behind each contestant. Ordeal was introduced and the trial by battle fallen back upon if other means failed. In the end it became the practice for the wise men of a tribe to sit in judgment upon disputes. These eventually became the judicial tribunals known to us from remote times.

The function of the tribunal was not to *make* the rule of law, but only to *find* it. These ancient judges, exactly as the judges of our common law courts to-day, sought out the customary rule of practice and applied it to the dispute in hand.

In the last chapter we saw the world going through a kaleidoscopic change due to new discoveries of materials and methods in their application to man's needs. It is a world so different from year to year that not only are the practices of men, their manners and customs, speedily altered, but their very methods of thought appear to be changing.

If now we find that the great body of the law is only authentic custom constituting justice in human relations, it should follow that the law must change rapidly to keep pace with the turmoil of readjustment between men and the new factors which are constantly entering their environment. There can be no doubt that this is the case.

Social Needs Outstripping the Law—It is the pride of the legal profession and the disgust of social workers that the process of discovering the unwritten, customary law of the people by the determination of disputes in our common law courts is slow, cautious and painful. In fact the discovery of justice in human relations through our tribunals of justice lags far behind the social needs of the time. "The real danger to administration of justice according to law is in timid resistance to rational improvement and obstinate persistence in legal paths which have become impossible in the heterogeneous, urban, industrial America of to-day." [1]

New inventions in transportation facilities, such as the high speed locomotive, the automobile and the airplane have brought men face to face in cramped living and working quarters; have put into the hands of a few the power to take advantage of the many; have thrown the customs in human contacts completely out of gear. New equities must be worked out. How shall they be worked out? Is civilization well enough informed of its past, student enough of its ancient customs, seer enough in the philosophy of justice to determine these problems of social relationships as the need arises, or must we go along on the cut-and-try method of daring as much for oneself as possible and watch the consequences? The answer of the people of the new century is "No."

The population-swarms of to-day are too intense, the dangers of epidemic disease, of conflagration, of personal injury, of lawlessness are too great to be left to the scheming watchfulness of the individual. The people as a whole must make an effort to determine, upon a basis of old and approved principles of justice, the equities between man and man and the status of the individual in the whole. We are living to-day in a consciously ordered society, fallaciously ruled to a large degree no doubt, but ruled nevertheless, and ruled so far as practicable upon old principles tried from remotest times and found just.

As the law is custom crystallized to a degree into general rule, the tendencies in the growth of the law, changes in legal conception, new emphases on special phases of law, are im-

[1] Roscoe Pound. *Spirit of the Common Law.*

portant in the science of public welfare. If legal theory was ordered according to one school of thought in the early days of the American states, and is found to be facing a different school of thought after the lapse of less than two centuries, the fact of this transformation is important in an appraisal of those factors which go to make up the common well-being.

The individuals who settled the American colonies found themselves face to face with a new set of living conditions for which their legal equipment was the rules and practices under which they had already lived in the old country inherited from their fathers. But one great factor, not to be forgotten, was the fact that in the northern colonies at least, the long exile was undertaken for the sake of an enlarged personal freedom. Religious persecution, ramifying into all the petty oppressions familiar to the powerful, drove them into a new land, determined to carve out a new destiny. In their determination—let the humble records of the selectmen of the New England towns bear untutored witness—lay the will to govern themselves, to make their own laws and to live their own lives as they saw fit.

Individualism—Hence it is that an intense individualism is the most striking feature of American law even to the present day. The colonists found a new land of vast open spaces, far-reaching valleys capable of intensive tillage, traversed by abundance of wild game and owned by the roving Indian. Six, ten or a dozen log cabins made up a fair settlement, and between these outposts of civilization frequently lay nothing but a foot-path and more than a day's journey. In such a setting the rights of individuals, fairly established, were not likely to clash. It is small wonder that in the exact center of this newly adopted legal system towered the individual citizen himself, jealous as an eastern potentate of all that he might call his; suspicious of all authority; saying in his smug Puritanism, "What I promise that will I perform, and only that which I promise shall the law compel me to do." His law was a law of contractual relationship. His contacts were contacts of will rather than condition. He needed rules to enforce agreements: he needed precious little in the way of control over his personal conduct.

If the citizen of this new individualistic state was to be found

guilty of an offense against the community, it must be shown that he had a will to the injury. Without the malicious mind, then no guilt. His mortgage deed must be exactly drawn and duly executed for proper consideration; but once so found—the will to convey so satisfied—then performance might be exacted to the last jot. Whoso contracted therefor might have his pound of flesh. The old Puritan could not conceive of liability arising merely out of a relation apart from an intent or an act binding the conscience. Neither could he picture government as anything more than a modicum of service created by the individual for the purpose of keeping the peace and securing him in his safety of person and his rights of property. Government of the paternal kind he classed with the breed of oppressions; born of despots; maintained for the privilege of a class.

With this glorification of individual rights goes a sacredness of property. It is in no way surprising that in American practice the individual has a right to acquire practically what he has the money to buy; and having bought it may use it—with only the mildest restrictions as to public nuisance—as he pleases. The citizen may purchase the last vacant lot in a populous district and use it for a junk yard, driving the children out of their inherited playground.

If this Puritanical citizen is accused of crime, he must be tried by a jury of his peers. The charge against him must be absurdly replete with half-dead verbiage, since the slightest inaccuracy will be held to have prejudiced his rights. He must have the right to bail, to appeal, to complete freedom on the most technical grounds of double jeopardy. His guilt must be proved beyond a reasonable doubt. A preponderance of the evidence will not do. Better, in this philosophy, that a thousand guilty men escape than that one innocent Puritan be punished. For which reason the escapes have become numerous of late years.

Less than two centuries have passed since the days of the Puritan; less than a hundred years since the silent overthrow of the world which he established. For overthrown it has been, not consciously, not by the declaration of a despot or band of rebels but rather by a series of kaleidoscopic changes in the

conditions under which the people of the United States had to live and work, to breed and rear their children; changes resulting directly from the reorganization of industrial life by new discoveries and inventions; which have built cities like magic; which have placed upon the highways new high-powered, high-speed vehicles; which have sent workmen great distances to their labor; which have changed the very food available to the city dweller; which have curtailed the liberties and the opportunities of the individual in some directions while vastly enlarging them in others.

Changes in the conditions of living and labor are followed instantly by corresponding readjustments in social relations. The very attitude of man to man takes on a new complexion to meet the new order, and these attitudes in their multiple aspect become those new shades and phases of customary conduct which gradually get themselves recognized as the rational way of adjusting personal rights—they become the substantive law. Thus the last century has produced a great body of law relating to the corporate form of business enterprises, in which long recognized principles of fair play, of trusteeship, of personal integrity have been interwoven in a new scheme of honest dealing applicable to an impersonal entity. There is a new series of decisions constantly growing, relating in some way to the use of the internal combustion engine. The telephone has had a far-reaching effect upon the growth of the law of notice, of contract, of evidence, of agency, of trespass. There is probably not a major invention that has not left its impress upon the common law, since it must leave its mark upon the relations and customs of the people.

Changing Bases of the Law—But the most spectacular legal aspect of industrial change with its inevitable social readjustments, is the effort of the state to keep pace with legal needs by rapid advances in the body of public law and regulation. As population increases in its ugly approach to the point of saturation in terms of food supply, a sudden development like the coming of automatic machinery throws the equilibrium of production and distribution out of gear. Great cities spring up to meet new mechanical processes. The development of huge water powers relocates industries and dislocates the

housing plans of hundreds of thousands of workmen and their families. Consequently, statutes follow each other in rapid succession seeking to make the law more certain with reference to the new and unprecedented conditions as they arise. Ordinances are legion, and gradually the emphasis must be placed where in principle it has always belonged, namely, upon social relations. The law of persons becomes all important. The law of property must take second place, and where the rights of the individual come into conflict with the public good the individual must give way.

The United States with its rapidly growing population-swarms is already on a basis of social relations in the development of its law. The old basis of contract has had to yield to that social necessity which is born of the new order of living.

It is upon the solidly established principles of justice between men, for instance, that the whole statutory structure of workmen's compensation administered by industrial accident boards is founded; but the extension of apparent judicial functions to administrative government boards is alarmingly new. It finds its justification in social relations, in industrial pressure which jeopardizes the position of the breadwinner and threatens him with too great a risk of failure to provide for his wife and children.

The driver of a two-ton automobile is literally manhandled by administrative officers in charge of the several functions of government touching the highways. As a Puritan his sacred independence is sadly trodden upon. If he runs by a red signal or the upraised hand of a traffic officer, he is "pinched." If he leaves his car for thirty-five minutes in the identical spot where Dobbin used to hollow out the stones and chew his hitch post by the hour, he is summoned. If a child jumps out of nowhere and is struck, let the chance of avoiding the crash be ever so meager, he finds himself charged with manslaughter. He is not allowed to take his own chances of having to pay damages at law for personal injuries. He must insure himself against that contingency and pay good money in the form of one of the highest rates of premium yet known; and if he doesn't, he can't secure a license to drive, in which event he is off the road and barred from using the highways, reserved from time im-

memorial as the King's highway open to all loyal subjects.

Social Necessity—Why should this be? No radical principles of justice have been worked out thus far. But social necessity demands that the driver be curbed. He is in charge of a heavy, high-powered vehicle, capable of traveling with the speed of any express train and incapable of being stopped by any known mechanism until after a considerable distance has been traversed. Dobbin could sit down on his haunches in about three feet of space. A two-ton car at twenty-five miles per hour requires something over forty feet for its stopping interval. The need of protecting life and property, of guaranteeing a fair chance to all, requires that the individual in the exercise of such dangerous power be strictly accountable for the harm he may do. Consequently his intent is relatively unimportant. What he does he takes the responsibility for. He must expect children to jump out of nowhere. He must pay the penalty when he usurps parking space in a street where there is barely enough square footage to carry the rolling stock at busy hours even if it is kept moving.

Again, the landlord who lets his premises to a tenant who conducts there a disorderly house is held in many of our jurisdictions to be liable as an offender whether he actually knew of the breach or not. He is upon his notice to see to it that his property shall not be used for anti-social purposes. Now this is intensely unpuritan—grossly unpuritan—as witness the rigor of the statute which padlocks such premises, thereby cutting off his revenue. He is deprived of the enjoyment of his property, and by a statute. The answer is again that the social fabric is so hard to keep sweet and clean that the burden of keeping his small share of it in a commendable state is placed, and tends daily more and more to be placed, squarely upon the individual's own shoulders. Ignorance of the law is no excuse. Social necessity is saying to-day that in many instances ignorance of the facts is no excuse either. As the pressure of living face to face in congested population-swarms becomes greater and greater, the sheer necessity of getting along peaceably together and of protecting our society from disease and destruction by the elements or by ill-disposed individuals, requires that we set up rough and ready rules of justice. As society grows older

and more intense we tend to experience more and more community consciousness. In the United States, since 1915, a vast world-changing movement in city and town planning has been launched. We are still too close to it to realize its far-reaching import or why it is coming about.

City and Town Planning—As to the reason, it is social necessity again. The protection of the citizen, the guaranty of a fair night's rest, the right to some peace and quiet, the chance for a bit of greenery, a little fresh air and a space for the children to play in—all these point to a definite, increasing urge to put the municipal house in order and keep it so. So great is this need that we now satisfy it by adding to our organic law such a glorification of the police power of the state as to say that wherever the rights of the individual and the rights of the community come into conflict the individual must give way.[2]

The social worker must fix in his mind therefore not only the natural customary character of law, the regulation of the relations between man and man, but he must recognize the great part that present custom plays in the growth of that law. Finally he must make sure of the fact that man is all the while struggling to adjust himself to his environment and that the more rapidly the environmental conditions change the more furious and intensive must be the effort to adjust. From which reasoning it becomes clear why there is such a present riot of legislation, such a multiplication of courts, such an enormous extension of administrative public welfare functions under governmental auspices.

## FOR THE STIMULATION OF THOUGHT

1. Jeremy Bentham, in his treatise on Legislation, declared that law ought to be "a portion of discourse by which expression is given to an extensively applying and permanently enduring act or state of the will, of a person or persons in relation to others, in relation to whom he is, or they are, in a state of superiority." Thomas Hobbes defined the law as "the speech of him who by right commands something to be done or omitted."

If the famous laws of Hammurabi, king of Babylon, may be taken

[2] Hadacheck *v.* Los Angeles, 239 U. S. 394.

as an example of the above definitions, would you say that the Field Code, and the various codifications of statute laws in our several states represent like examples? Examine these definitions in the light of the reasoning offered in this chapter.

2. If, as contended in Chapter III, the discovery of new mechanical processes changes social relationships to correspond, how can law, as contended in this chapter, be the result of slow crystallization of custom? Would not the result of rapid industrial change be an extreme instability in the existing law? Does the course of court decisions and of legislation reflect such an instability?

3. In what way are these changing concepts in law and in government vital to the science of public welfare?

4. Bearing in mind the proposition that law is custom, and looking critically at the course of human relations through modern times, what sort of a case can you make out for the thesis that "might is right"?

## FOR FURTHER READING

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Field, David Dudley: *Proposed Civil Code of New York.* (Introduction.)
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## CHAPTER V

## THE DISCOVERY OF THE INDIVIDUAL

Every observation in our study of the life and labors of mankind offers proof of the unwilling truth that human courses in thought and action are determined not by supernatural command or inexorable destiny, but rather by man's ever recurring and cumulative discoveries of natural forces and their meaning, his inventions through which he obtains control over his environment, and his solution *pro tanto* of the maze of phenomena which make up that mysterious and sorely puzzling universe in which he finds himself.

It is an unwilling conclusion, and for good reason. It is a quality of the human mind to seek some explanation of all mysteries which confound us; an explanation which accords in some fashion with our previous experience, since it is through our experience that we gain impressions, ideas and reasoned courses of thought. This compelling necessity is constantly shown in the progress of the child mind. For the little child, looking in wonder at the moon, must have his explanation; and if mother gives him the traditional answer that "God made it," he immediately begins to turn over this second puzzle, greater than the first because less tangible, and pursues his constant search for an answer which he can square with something, however small, in the content of his short experience. He looks at his infant sister and asks "how come"? To which mother replies that the doctor brought her in his bag, a perfectly plausible answer, fully satisfactory, until he discovers it to be a lie, after which he renews his search. Nor will he be satisfied to stop at the doctor. Where did that baby come from? Not least among the marvels of psychological inquiry are the grotesque and intricate explanations which the child mind offers for mysteries beyond its ken but somewhat explainable to our own relatively advanced understanding.

It is natural to man, therefore, to explain his mysteries. And

explain them he will, whether by his own demonstration in experience or by his imagination of conditions which he cannot prove by experience. The concept of some power eternal and omnipresent apart from man and above him has attended human thought as far back as we can find ethnic record. The chief function of man's gods in all times has been the explanation and the oversight of those things which man cannot understand. That for which man finds a satisfactory explanation out of his earthly experience is common; that which remains a mystery is divine. Hence whenever a mystery is resolved by scientific discovery it becomes common and the gods must let go. But inasmuch as the little that man knows or thinks he knows is finite, strictly confined within a small compass; and the range of the unknown is infinity, it is easy to understand the long procession of theologies and mystical philosophies, which have attended the gropings of human kind throughout the ages, clung to with the absoluteness of blind faith until common unromantic human experience forces the retirement of each one as no longer tenable in the light of present realities. It is in our own generation perhaps that a material heaven and a material hell are giving way to an idealistic interpretation which is another way of saying that this particular portion of the prevailing theology does not square with human experience and must go the way of all other things disproved.

The New Science of Psychology—Few courses in scientific research have yielded such revolutionary results as the study of psychology. Through it the mind of man has shed much of its mystery. Old presuppositions have had to give way to scientific knowledge discovered through painstaking experimentation in the laboratory. The mysteries of the abnormal mind presided over aforetime by the devil have been resolved into terms of understandable experience. We are recovering somewhat from our fear that the scientific study of the human brain and of mentality may cheapen our ideal of the soul. We have even elevated the new science from the necromancy of phrenology and astrology to a position among the dignified pursuits of learning.

It is the purpose of this chapter to explore the attitude of the community toward the individual, together with the changes

which are now resulting from the new concept of the law and the new psychology. For this purpose it is necessary to look somewhat at old beliefs and suppositions regarding the mentality of man and to compare them with the new view, thereby pointing out the change which has come about in our appraisal of the individual and the trend of thought for the future.

Demonology is the content of primitive religion even as it is the matrix of the theologies of the present day. To the peoples of old, human welfare hung upon the caprice of demons who worked their will, anticipated a little it may be by the omens, auspices and oracles through which man sought to glimpse their necromancy, and softened ever so little by the supplications of magic and sorcery. Though priesthoods have striven in all times with the contending forces of good and evil, man has viewed himself as the merest flotsam upon the troubled pool of existence. The customs and folk ways of our own time are but the slow outgrowth and evolution of the customs of earlier days based upon universal belief in spirits and demons. They differ only as knowledge has rendered the demon solution invalid and as new methods of living born of discoveries and inventions have created new needs and exactions in life. We still think "unclean" of a corpse or a leper. It is taboo. The primitive, through long observation, noted that demons entered such subjects and sprang out upon those who touched the lazar hand. We recognize such dangers through our knowledge of the germ theory of transmitting diseases. We still recognize the conclusion as sound but we have discarded the old premise for one which we consider rational.

But the great basic fact about demonology was that it sought no rational explanation of anything. The cause was presupposed. It was *believed* to be demons; therefore it was demons. In this atmosphere of fixed and satisfied belief it was natural that man should be little concerned with inquiry as to himself. He might differ in appearance, in strength, even in mental ability; but as the creature of some great Supreme Power above and beyond human control, he was of a fatal sameness. Each individual had the same kind of soul. Each had the same kind of body. It did not occur to man to be too analytical about himself; the functions of his body; his mind; the reasons for

his presence here. Such inquiry was a reflection upon the Supreme Being who made him. Thus the very definition of man stood in the way of its proof.

So ingrained in human thought was the philosophy of demon origin and direction that witchcraft was naturally the simplest sort of outgrowth of magic. It was black magic. A lonely old lady who lives down the lane looks like a witch or a wielder of magic. She has hairs on her bony chin. She is very poor and has to go about gathering fire wood. She lacks the urbane polish of society and cultivates a sharp tongue. Because she is a mysterious figure, the children tell tales about her. She says to a credulous housewife: "I am no more a witch than you are a wizard," and straightway the housewife has a miscarriage or the family horse goes lame or a storm comes on and the milk sours or screams are heard in the night and the infant in the next house has convulsions. As these happenings in the days of witchcraft had no rational explanation and were therefore the work of demons, it was necessary to assume that any evidence of the presence and activities of demons was good evidence. Anne Putnam—falling into a fit and crying out upon George Burroughs—one of the unfortunates hung for witchcraft in Salem only two centuries ago, is witness enough to seal the doom of that sterling citizen, for how else could the fit be explained! And as the dread disease of smallpox and other fearful epidemics must also be explained as the work of demons, what security could the public enjoy while one individual proved to be possessed of a demon or having power to cause a demon to enter, remained unhung. The logic of witchcraft is sound, granting the premise. Human understanding has surpassed the premise: that is all.

Treatment of the Insane in Early Days—The history of the insane and their treatment in the past is a dour record of abuse and neglect. These unfortunates were possessed of the devil; that is, they were different from the rest of us for no assignable cause. We had no scientific explanation. The condition was a mystery, and being such it must be referred to the powers of darkness, the result being hurtful to mankind. Of course a person possessed of the devil was in league with

him and all good people must have no traffic with him lest unwittingly they fall into league with the devil.

This is why we find insane persons shackled to stakes in public places and thrown into coarse pens with little protection from cold and hunger. Such treatment was regretted but it must be carried out because it was the only treatment to accord the devil.

Either Sanity or Insanity—It was long obvious to even the most casual observer that insane persons exhibited many different aspects of abnormality. The talkative and excitable case was almost a complete contrast from the sullen, morose paranoiac. But then this was only a sign that demons differ and that among the insane were many devils. It followed naturally—and this is still the law—that there are no degrees of insanity. Either an individual is sane—in which case he is as fully responsible under the law and in all his dealings with his fellowmen as any other sane person whatsoever; or he is insane—in which case he has been declared, by a jury of his peers or the legal equivalent, to be insane, unable to enter into a binding contract, incapable of managing any of his own affairs, in terms of effective citizenship completely and irrevocably dead. If he stands in the dock charged with a crime, he has no excuse for acts proved so long as he has not been declared to be insane. If he has been so declared he cannot be held for the doing of any act the guilt in which consists in a conscious will.

With the individual occupying such a status in society it was natural to set up rules applicable to the *average reasonable man* and to hold all individuals strictly to account for their infraction. In the same way it was natural to provide food, shelter and clothing for those possessed and insane, thinking little of treatment, considering the places of such detention to be asylums for the unfortunate and the unclean rather than hospitals for treatment.

If the law breaker was found guilty his treatment was meted out with uniform impartiality. For a theft of one shilling, a year in prison at hard labor. For the amount stolen and not the necessity of the thief, his degree of temptation or his degree of mental capacity to understand the gravity of his act, represented the gauge of the punishment. It is within modern

times that the theft of forty shillings or more meant death, to all alike, with even-handed justice.

The law to-day is filled with this assumption that we are all alike if in our right minds. In that state we are all of the same degree of responsibility under the law; all equally capable of understanding our duty as citizens; of appreciating the rights of our neighbors; of exercising the will to perform our obligations as self-supporting, independent members of the social body. If insane, then we are all alike in our condition, to be saved from death for humanity's sake; but to be herded in corrals and kept safely from harm to ourselves and to the public till death removes us from our unhappy plight.

Current Psychology—Scientific inquiry into the nature and the workings of the human brain is of recent date. James wrote his great work on psychology in 1890. Before that time there was little to claim for the scientific point of view. Since then, however, the intensive laboratory has been brought into use and unremitting study, based not upon demonology and ecclesiastical presupposition but rather upon methodical research into the physical facts, has begun; with the result that even in this brief interval it is a valid claim that human society for the first time really has discovered the individual.

He is identifiable as a being in considerable degree different from all other beings in society. Not only are his finger-prints different but his mental texture, his qualities of intellect and of personality are all different. So various is the human family that we must to a large degree rebuild our philosophy of the relationship of the community or state to the individual. And just at this point is where the inquiry is of such vital importance in the science of public welfare. We must forget our old dictum that all persons of the same age are persons of the same mental growth and capacity. We still herd our six-year-olds in the first form, our seven-year-olds in the next, and so on, but the vogue of such a wooden plan must go by. The schooling systems of the future will begin with searching mental analysis before classification is attempted; and after which, all groupings will be made according to the degree of mental capacity for the operation proposed.

We must abolish our old concept of punishment for civil

wrongs based on the hypothesis of conscious will and full responsibility, and in its place we must put a system of treatment of the individual which shall hold those found to be responsible to a full measure, while the defective and the weak receive treatment that is only condign and looks to prevention of future offenses.

For our attitude toward the insane and the mentally subnormal, the new understanding must bring about such a reorganization as will keep the asylum for the terminal case and replace it for the mentally sick with a hospital for treatment. In the determination of the fact of insanity it must mean the disappearance of the ancient writ *de inquirendo lunatico* and a decision by twelve good men and true who know nothing about the intricacies of the human mind, and their replacement by a panel of scientists who shall examine, study and decide on a scientific basis.

Without naming the cause as such, it is this same enlightenment regarding differences in individuals and their varying capacities for citizenship that is revolutionizing our social institutions, changing our law, revamping our social work, rebuilding our systems of education and tempering the severity of our judgments of conduct. Its effect ramifies through the whole gamut of public welfare service. It may be seen in the tendencies of our progress indicated in all the later chapters of this book.

## FOR THE STIMULATION OF THOUGHT

1. Is there any other explanation of witchcraft than that suggested in this chapter?

2. If it is true as here asserted, that individuals are all different and that therefore they vary greatly in their degrees of ability to carry the obligations of citizenship, is it necessary, in order to be just, that they be treated differently for their offenses against Society? Will it ever be practicable to individualize treatment? How can it be done in the administration of the law,—the criminal law, for instance?

## FOR FURTHER READING

Cooley, C. H.: *Human Nature and the Social Order.*
Ellis, Havelock: *The Criminal.*

Henderson and Gillespie: *A Textbook of Psychiatry.*
James, William: *The Varieties of Religious Experience.*
——: *Psychology.*
Mechnikov, Ilia Ilich: *The Nature of Man.*
Parmelee, Maurice F.: *The Science of Human Behavior.*
Paton, Stewart: *Human Behavior.*
Thomson, William H.: *Brain and Personality.*

## CHAPTER VI

# THE LAW OF CHARITABLE TRUSTS

A basic cause of inefficiency in social work to-day is the prevalent failure of managers and executives to appreciate the trust nature of the service they render. Their conception of duty is most frequently that of one who owes a duty of sympathetic help to the clients he serves. As a member of a chartered body he is punctilious with regard to the limitations set down in his charter. He would scorn the thought of doing anything wrong. Beyond these two vistas his horizon does not lift.

The Social Agency a Trustee of the Whole Public—In fact, directors and workers are trustees of the public welfare. Not the immediate client, but the whole community is the beneficiary. Not the client but the whole people, the indefinite public, are the owners and equitable title holders of their funds. The high court of equity is guardian of those funds for the people and can take the trust away at any time for wrongdoing or even for the negative offense of burying the talent in the ground. Within the terms of their trust they are the servants of society at large.

In this aspect of public welfare service it becomes important that the social worker should know at least the story of charitable trusts or uses and something of the legal status of public welfare enterprises to-day. An outline of such information is attempted in this chapter.

Hospices and monastic establishments, founded on eleemosynary trusts, had existed in England for centuries before the settlement of America.[1] In the fourteenth and fifteenth centuries great abuses had grown up among them, especially with reference to the livings which they afforded and which were absorbed by the proprietors to the exclusion of the needy who were originally intended to receive them. In 1414 a statute had

[1] For charitable uses and church benevolences in England, see Chapter II, *ante*.

forbidden certain of these abuses. In 1531 superstitious uses were forbidden.[2] By the time of Elizabeth the practice of mere denials and restraints upon personal freedom in the establishment of charitable trusts and the willfulness of trustees in carrying them out, was ready for rebuilding into some coherent legal plan which should recognize such trusts so far as sound public policy might allow. Quite in keeping then with the purpose of codifying the public treatment of the poor, and exactly parallel with the same, the government undertook to define its position with reference to all voluntary efforts in charity.

The resulting statute (43 Eliz. c. 4. 1601) begins with a preamble—now recognized as the only remaining vital portion—which recognizes the preëxisting state of charitable trusts and voluntary efforts therein. Because it recited these forms of charitable service it is now held to be a declaration of such voluntary efforts as the law had for ages recognized as charitable and would therefore henceforth regard as valid. The preamble reads as follows:

"Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks of money have been heretofore given, limited, appointed and assigned, as well by the Queen's most excellent Majesty and her most noble progenitors, as by sundry other well disposed persons; *some for relief of aged, impotent and poor people; some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities; some for repair of bridges, ports, havens, causeways, churches, seabanks, and highways; some for education and preferment of orphans; some for or toward relief, stock or maintenance for houses of correction; some for marriages of poor maids; some for supportation, aid or help of young tradesmen, handcraftsmen and persons decayed; and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers' and other taxes;* which lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money and stocks of money, nevertheless have not been employed according

[2] The words *use* and *trust* are often used interchangeably. A superstitious use was a gift of land or other property in trust for the performance of such religious acts as the ruling church held impious.

to the charitable intent of the givers and founders thereof, by reason of frauds, breaches of trust, and negligence in those that should pay, deliver and employ the same; for redress and remedy whereof, be it enacted," etc.

Custom Centuries Old—Here was acknowledgment of the fact that it had been the recognized custom of Englishmen to establish charitable trusts for eleemosynary, educational, ecclesiastical and municipal purposes. Our American courts, having found that equity jurisdiction of charitable trusts inhered apart from this statute, could easily assume that this recognition of the preëxisting custom of England was good evidence that these uses recited in the preamble were in fact the particular forms of use which the common law of England had always recognized. They were therefore the forms which we could properly recognize quite apart from any dependence upon Elizabethan legislation.

With the founding of the American colonies was to begin a new experiment among English-speaking peoples. The common folk were to try their hand at sovereignty. Old England might tend in her institutions to become democratic; to abolish the rule of kings by divine right, to reduce her House of Peers, and in all outward forms to become a democracy; but her theory of government and hence her fundamental law remained aristocratic: and whatever Cromwell and his successors in behalf of the populace might do to the supremacy of the church, ecclesiastical custom and chancery practice must remain in the theory of her law an inextricable part of her scheme of government.

But in America government became an association on a civic basis, divorced jealously from the church, maintained so much apart from ecclesiastical interest and overlordship that charity, which sprang from the matrix of the church, must in the new order of things be born again. So great a student of the fundamental law as Chief Justice Marshall declared from the Supreme Bench of the United States [3] that the Statute of Elizabeth (43 Eliz. c. 4), which in English law had come to be recognized as the basis of the law of charitable trusts, having been

[3] Phila. Baptist Assn. *v.* Hart, 17 U. S. (4 Wheat.) 1 (1819).

repealed by legislative act in Virginia, was therefore, together with its consequences, eliminated from Virginia law.

Supposedly this left the new states as innocent of a philosophy of charitable trusts as Babylon under the rule of Hammurabi. But that other-mindedness which is the index of progress among self-governing peoples must be served. Precedent or no precedent, there must be in democratic America a theory of charitable uses. It must be possible for the philanthropic individual to create trusts for the advancement of the common welfare in his village, his county, his state, the nation. It was not long therefore until the technical difficulty raised by the unanswerable reasoning of Marshall was swept aside by the happy notion that after all it was only a British conclusion that the reasoning of charitable trusts rests upon the Statute of Elizabeth, whereas the truth, always accessible to American courts viewing the situation *de novo,* is that such trusts existed in law long before the statute and are therefore, for our purposes, not dependent upon it.

The American Theory and English Common Law—By 1844, our courts had squared themselves completely about by holding that the jurisdiction of equity over charities does not rest upon the Statute of Elizabeth, and that such jurisdiction inheres at common law, independently of the statute.[4] In this way the English doctrine of charitable trusts has been reinstated completely in American law.

But even though in theory the American doctrine of charities is not derived from the Statute of Elizabeth, the English doctrine is; and that English doctrine *in toto* is the basis of the American rule. This being so, it becomes important to carry constantly in mind the several uses recited in that ancient preamble. It is considered the Magna Charta of modern charitable trusts. It is not the intention here to pursue in detail the law of the several states [5] but rather to identify the underlying principles upon which the American law of charitable trusts is based, submitting the same as a guide to the lay worker whose

[4] Vidal *v.* Girard, 43 U. S. (2 How.) 127 (1844). See also Kain *v.* Gibbony, 101 U. S. 362, 366.

[5] For a detailed exposition of the law of charitable trusts see Zollman, *The American Law of Charities.* 1924.

contact with law texts and court reports is infrequent. And first as to the reasoning upon which our courts discover a trust.

Why Charitable Trusts?—How has it come about that all civilized peoples, both by their substantive and their statute law, recognize the validity of trusts for pious or charitable purposes? In the preamble to the Statute of Elizabeth are enumerated twenty-one varieties of charitable uses which that statute declared to be valid. By 1833 in England this number had been expanded by interpreting the old statute according to its spirit rather than its letter and by reasoning from analogy, to forty-six. In the United States to-day the varieties of charitable trusts validly operating must be greatly in excess of forty-six. The possibilities appear to be limited only by the social needs of the time.

The answer to our question is assuredly not confined to the statement that such trusts have been recognized from time immemorial and therefore must be accounted valid because of the precedent. We are making new varieties of charitable uses every day. A research foundation to be devoted to the study of cancer probably would not fall within the Elizabethan list. Yet it would be rated a most valuable trust in modern law.

Nor can the answer be that whereas the benevolences of the Middle Ages were induced mainly by the Mother Church and were made for the good of the giver's soul, the pious intent is the true ground of justification. With the separation of church from state it became quickly apparent that charities were not merely an appendage of the church. They deal somehow with the needs of society and in so doing become a social expedient if not a necessity.

It might be thought that as charity apparently deals in good works, the intent of the giver must bulk large in the reasoning upon which the validity of such enterprises is based, but we discover that the courts in their effort to find as many charitable gifts valid as they can have declared that the intent with which a trust is created is immaterial. The donor may have wished all mankind in perdition and may have thought his trust was just the way to bring that result about. The court still will find his gift valid if it appears to be an advantage to so-

ciety. It is the nature and the effect of the gift, not its motive, that determines its legal character.[6]

Before attempting a categorical answer to our question, it will be of help to review some of the definitions which have formed landmarks in the evolution of charitable trusts.

In 1804 arose the famous case of Morice against the Bishop of Durham[7] in which one Ann Cracherode, by her will, bequeathed to the Bishop all the residue of her personal estate upon trust "to such objects of benevolence and liberality as he in his discretion shall most approve of." In holding the bequest too indefinite to constitute a charitable trust, Sir William Grant, then master of the rôles, declared that "those purposes are considered charitable which the Statute (of Elizabeth) enumerates, or which by analogies are deemed within its spirit and intendment." This definition was later approved by Lord Eldon, who heard the appeal.

But the only flexibility in Grant's definition lay in the outlet which it provided for extension by analogy and its declaration that the spirit and intendment of the statute should govern rather than its letter.

The Pennsylvania Definition—In 1844 the Supreme Court of Pennsylvania, in the leading case of Vidal *v.* Girard[8] revised its own decision in the case of the Philadelphia Baptist Association *v.* Hart,[9] during the course of which trial it received from learned counsel a definition which it affirmed and which has been quoted widely. The advocate defined a charitable use to be "whatever is given for the love of God or for the love of your neighbor in the Catholic and universal sense—given from these motives and to these ends—free from the taint of every consideration that is personal, private, or selfish." The statement is remarkable as showing the great distance which legal thinking had traveled since Grant's definition made only forty years before. But it is noteworthy also as

[6] Episcopal Academy *v.* Philadelphia, 150 Pa. 565. Mass. Institute of Technology v. Atty. Gen., 235 Mass. 288.

[7] 9 Vesey, Jr. 399; 10 Vesey, Jr. 521.

[8] 43 U. S. (2 How.) 127.

[9] 17 U. S. (4 Wheat.) 1.

being wholly inadequate even when applied to numberless trusts already sanctioned and in operation. The law cannot know the intent of the donor. He may, and in most instances does, intend to perpetuate his name by a show of good works. He sets up a memorial building with a bronze plate in the front hall stating his identity and his act of charity. He may name the society after himself. He may require his portrait to be hung in the building or his statue to be set out in front. Such gifts are tainted with considerations that are personal, private and selfish, and would be invalid by the definition in Vidal *v.* Girard.

Justice Gray's Definition—A broader definition was necessary. It was supplied by a famous jurist, then of the Massachusetts Bench, Mr. Justice Gray, who in deciding the validity of a testamentary trust devoted to the assistance of runaway slaves, said, "A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or restraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government." [10]

Mr. Justice Gray in this definition embodies the four classifications into which all the uses named in the preamble to the Statute of Elizabeth are found to fall. Obviously, objects within these classes are valid only if they conform to existing law. In addition, the beneficiary must be indefinite in number, since a gift to a person or group of persons identified as the beneficiaries constitutes a private trust and is not charitable in law.

This latter limitation requires some further explanation. A gift may be benevolent without being charitable. A legacy to the person who shall care for the testator in his last illness may be benevolent but it is not charitable in the public sense.[11] It identifies the recipient sufficiently to exclude all others from participation. Hence such a gift does not create a public trust.

[10] Jackson *v.* Phillips, 96 Mass. (14 Allen) 539, 556.
[11] Lear *v.* Manser, 114 Me. 342.

A bequest to be applied by a charitable society to the enforcement of laws enacted to prevent cruelty to children is benevolent but not charitable in the public sense.[12] Again donations raised for the relief of certain survivors of a disaster, like the wreck of the *General Slocum* in 1904, do not constitute a public charitable trust, even though they are plainly in aid of charitable service.[13] These are instances of private charities. In general "when there is a body, or a definite number of persons, ascertained or ascertainable, clearly pointed out by the terms of the gift to receive, control and enjoy its benefits, it is not a public charity." [14]

JUSTICE SWAYNE'S DEFINITION—But for the purposes of the public welfare, the dividing line between public and private charities comes very near to a distinction without a difference; and the recital of the ancient uses of the Elizabethan Statute can serve little more than to exhibit a line of samples, since the social needs of the day create ever new channels through which the benevolence of the individual may advance the common well-being. Even the definition of Justice Gray must be broadened. Justice Swayne in 1877 in the case of Garrison *v.* Swayne[15] generalized the subject when he declared that "a charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man."

OTHER CONCEPTS—Of like tenor is a pronouncement of the California court: "A charitable trust or a charity is a donation in trust for promoting the welfare of mankind at large, or of a community, or of some class forming a part of it, indefinite as to numbers and individuals. It may, but it need not, confer a gratuitous benefit upon the poor. It may, but it need not, look to the care of the sick or insane. It may, but it need not, seek to spread religion or piety." [16]

The Missouri Supreme Court also has sought an all-embracing definition. In the case of the Missouri Historical So-

[12] People *v.* N. Y. S. P. C. C., 161 N. Y. 233.
[13] Lock *v.* Mayer, 100 N. Y. Supp. 837.
[14] Old South Society *v.* Crocker, 119 Mass. 1, 23.
[15] 75 Ill. App. 402, 411.
[16] People *v.* Cogswell, 113 Cal. 129, 138.

ciety *v.* Academy of Science, it said, "Any gift, not inconsistent with existing laws, which is promotive of science, or tends to the education, enlightenment, benefit or amelioration of the condition of mankind, or the diffusion of useful knowledge, or is for the public convenience, is a charity." [17]

Justice Gray's Statement Still Basic—But Gray's pronouncement is still regarded as the most accurate definition of a charitable use under American law. It answers the question "What is a charitable trust." It does not, nor can any mere legal definition explain why we have such trusts. What are the causes out of which charitable uses spring? Why should it be sound public policy that individuals should leave property to be devoted to the poor, the lame, the halt and the blind? How does it come that the association of the whole people which we call government does not attend completely to the processes of education and be able to say, no citizen shall give his wealth for educational purposes? How should it be good social philosophy that the individual can devote property to the relieving of the burdens of government?

In the social relationships that prevail in any modern community, it is the interest which the individual takes in the well-being of his fellows that forms the urge to social progress. This other-mindedness takes its expression in many forms of community consciousness. The inhabitants of a populous city find that their highways and their transportation facilities are badly arranged. A railroad traverses one of the main streets. Or the death rate in a crowded section is abnormally high and there is no park or playground in that neighborhood, or the city is developing in such manner that manufactures and homes are indiscriminately mingled. Seeing these things, the inhabitants decide to set their municipal house in order. They zone the city. They establish a park system and a system of playgrounds in conjunction with the public schools. They send the railroad through a subway. In these acts each citizen proceeds, it may be, from a selfish expectation of ultimate benefit, but certainly in the first instance he has the interest of the whole city in mind. Without this impulse to do for the whole, there

[17] 94 Mo. 459, 466.

would be little if any social progress. With it, great advances are being made.

It is sound social philosophy that this other-mindedness should be encouraged in all ways possible. And it is also sound policy that the individual should be encouraged to do all that he will in the furtherance of the public good. As to what constitutes the public good, it must rest with the whole people to decide. In the long run their decision will rest on long experience acquired through decades and centuries of slow evolution.

But what is for the public welfare is found to vary from decade to decade. Social relations are in a constant state of change. New inventions create new industries, which build new cities, call out new levies of workmen or workwomen to new jobs. New epidemics appear; new kinds of industrial accidents show up; new opportunities for vice and debauchery are presented. All through the gamut of social relations goes a tremor at every change in the industrial status of things. So the aims in public welfare service must change with the needs. The needs of Ben Franklin's day included assistance in the form of a loan to buy tools for young artisans. One hundred years later, when the Franklin Trust became operative in that particular, the young artisan belonged to a union and did not go out "on his own." The factory system had increased to such an extent that it was beginning to herd workers in barrack tenements in cities. New needs had arisen: the old needs were disappearing.

The ever-present need of advancing the common good is the sole justification for charitable trusts. So deeply is this philosophy of citizenship service ingrained in the modern community that the people through their courts hedge charitable trusts about with unusual and effective protection. What these safeguards are remains to be set forth.

As a regular policy, the courts will resolve a doubt always in favor of the validity of a charitable trust. They will find a valid trust wherever they can. This is because in true social philosophy the interests of the group are stronger than those of the individual when not identical. Thus the court will go to considerable length to discover certainty in the amount of

the gift. An annuity to a charitable corporation has been held valid even though there is no life for the gift to depend upon and in spite of the difficulty of figuring the interest.[18] A devise to a charitable institution after a recital of other bequests has been held valid even though no amount was mentioned, the court assuming that the residue was intended.[19] A gift for the benefit of the "westerly part" of a certain town, which in fact is not certain as to its boundaries and has no corporate existence, has nevertheless been held valid.[20] So also a gift for the benefit of a certain "neighborhood," even though no such district could be ascertained by definite boundaries.[21] A gift to a certain public use by name is valid even though no institution embodying that object is yet in existence. Thus a gift "for the use, privilege and benefit of a public seminary" has been applied to such a seminary established after the testator's death.[22] Moreover, a valid trust once found, is deemed to be forever dedicated to public charitable uses.[23]

Permanent Validity—Time and the social conditions to which it was to be applied may change but it will not be allowed to fail. In order that it may not lapse for non-user or because the class to which it related has gone out of existence, the doctrine of analogous use has been evolved by the courts. This is known as the *Cy pres* doctrine, by which upon representation that the trust is no longer capable of administration according to the original intent, the court instead of decreeing the discontinuance of the trust in favor of the heirs will devise a plan for its execution *Cy pres* or as nearly as possible to the original purpose and method. It is essentially a doctrine of liberal judicial construction. The Supreme Court of Indiana goes so far as to say that "The *Cy pres* doctrine of liberal construction will cause courts to be keen to discover whether the main purpose is charity and if it is to treat the testator's ma-

[18] Crawford *v.* Mount Grove Cemetery, 218 Ill. 399.
[19] *In re* McGeehan, 187 N. Y. Supp. 823.
[20] 2d Cong. Society *v.* 1st Cong. Society, 14 N. H. 315.
[21] Stallman's appeal, 38 Pa. (2 Wright) 200.
[22] Curling *v.* Curling, 38 Ky. (8 Dana) 38.
[23] Tyssen, *Charitable Trusts,* p. 5. Northampton *v.* Smith, 11 Met. 390; Nelson *v.* Trustees, 2 Cush. 519.

chinery of administration, not as conditions precedent to vesting, but as suggestions regarding the management." [24]

The tenet that a gift once valid for charity remains forever so dedicated causes another exception in the law in its favor. A devise to private uses is void if made to run for more than a life or lives in being, twenty-one years and ten months. This limitation is known as the rule against perpetuities. Charitable trusts are held to fall outside this rule.[25]

As public charitable trusts belong in equity, not to the trustees who administer them, but to the public who are their beneficiaries, such trusts are universally declared by statute to be exempt from taxation. This practice is supported by the public policy of encouraging the making of charitable gifts. It is further justified on the ground that public uses, already devoted to the public interest, should not be taxed to provide money for further public works.

Public Property—Finally, because of the inalienable public interest in charitable trusts, such funds are in most jurisdictions not permitted by the courts to be impaired by any private interest. For instance, such a trust fund cannot be attached in a suit on a contract, or for damages in tort.[26]

From the foregoing account it must be apparent that the public welfare is served not only by the employee of government, administering a department of public welfare, or of health, or of mental disease, or of corrections; but also by those voluntary trustees and managers who hold charitable trusts in their keeping. The private charitable agency, no less than the public department, is engaged in the service of the community. So closely inter-related is the work of these groups that a treatise on the science of public welfare though for practical reasons avoiding an analysis of private charitable service, must set out as clearly as possible the proper relationship between

[24] Reasoner *v.* Herman. 1922. Ind. (134 N. E. 276, 280).

[25] Appeal of Treat, 30 Conn. 113; Ruth *v.* Oberbrunner, 40 Wis. 238; Strother *v.* Barrow, 246 Mo. 241; Webster *v.* Wiggin, 19 R. I. 73; Tincher *v.* Arnold, 147 Fed. 665; Crim *v.* Williamson, 18 Ala. 179; Northampton *v.* Smith, 11 Met. 390.

[26] Farrigan *v.* Pevear, 193 Mass. 147; Roosen *v.* Peter Bent Brigham Hospital, 235 Mass. 66; Nicholas *v.* Evangelical Deaconess Home & Hospital, 281 Mo. 182; Vermillion *v.* Woman's College, 104 D. C. 197.

public and private agencies. The reader will find such a discussion in Chapter VIII.

Before taking up this study of the dividing line between public and private enterprises, one more aspect of the law requires notice. This is the present status of the charity franchise, the methods now prevalent of issuing charters, and the small beginnings, only now apparent, of public supervision of chartered social welfare organizations.

## FOR THE STIMULATION OF THOUGHT

1. Who are the legal owners of the funds held by the principal relief agency in your home city? Why are not the directors the owners? Or the chartered Society, as such?

2. Why should the courts employ every expedient to find charitable trusts? What is the justification for a charitable trust?

3. Some years ago a benevolent and well-intentioned individual sought and secured from a state government a charter for a Society—the purpose of which was the education of poor children by the use of musical symbols. Money was begged from door to door and property acquired for the Society. Did the property constitute a charitable trust? Who were the real owners, i.e., the beneficiaries?

## FOR FURTHER READING

Zollman: *The American Law of Charities.*
Tyssen: *Charitable Trusts.*

## CHAPTER VII

## THE CHARITY FRANCHISE

We have seen that public policy encourages charitable works by the individual. If he will give of his private wealth to public welfare uses the public through its laws will husband his trust; will hedge it about with exemptions from taxation; will protect it from attack by private interests; will immortalize it with the cloak of perpetuity; and will cling to it through all the changes of time, varying its application when the original purpose fails. What else will it do for him in return for his willingness to engage in good works? It will grant him a corporate franchise to engage as a trustee in the advancement of the public welfare.

It is the purpose of this chapter to sketch the theory of the charity franchise and to indicate the present practice in the United States with reference to the granting of charity charters and their supervision in operation.

Theory of the Charity Charter—When the people through their government confer upon a group of individuals the power to carry on a joint effort to better conditions in the lives of that same people or some class of individuals among them, it grants certain rights not possessed by other persons or associations as a matter of common usage. Such a franchise or charter states the purpose within which the privileged rights shall be exercised. It calls for a responsible organization with officers, a board of managers and by-laws. It brings the group, its actions and its funds within such statutes as exist for exemption from taxation, from action for damages, from personal liability.

The Indifference of the Public—In return for such a grant government may in theory fix a limit upon the time of operation; upon the amount of property to be held; upon the territorial scope of the enterprise. It may require such accounting as it sees fit; may set up a continuous and inquisi-

torial oversight; and may hold over the concern the constant threat of abrogation. In the matter of the business franchise such limitations are frequently exercised. In the case of the charity charter, almost never. Even in the determination of the purpose, government is almost wholly indifferent. That which is alleged to be "not for profit," is regarded by that fact to be philanthropic; and if philanthropic then it must be for the public welfare. This fallacy pervades the law like a London fog. Other than some general rules and a few negative assumptions regarding "public policy" our governments are without a definition of "public welfare." Though we can in a few cases establish the anti-social character of a purpose as we see it carried out, we have no standards by which to judge positively the pro-social value of any such proposal.

A public-spirited woman noting the wretched condition of the sick poor interests her intimate friends in some effort at alleviation. Among them they employ a visiting nurse. The work grows. Friends are needed. They must appeal beyond their immediate circle. But the larger representation calls for some form of organization which will make responsibility more definite. They become the District Nursing Society with a board of managers and an executive committee. Soon they are advised that they should be incorporated if they wish to receive legacies and devises for charitable uses.

Down to this point the public through government pays no attention to the enterprise. No laws exist for its regulation other than the usual prohibitions, applicable to all individuals, against fraud, larceny, assault, trespass, public nuisance and the like. As doers of good works they are unnoticed and unknown, and this in spite of the fact that they are engaged in an extra-hazardous occupation,—the giving of aid in money or service to individuals without the usual consideration in return. They may do anything which in its nature or in the doing of it does not outrage public decency or stand out against the accepted tenets of public morals or public policy. As long as those who give them money or property do not object, they may spend fifty cents out of every dollar received merely in the process of collecting it. Or, they may create the nuisance of a tag day with numerous irresponsible children collecting

small sums. They may go directly counter to the best judgment of the Board of Health in the treatment of epidemic disease so long as they do not violate mandatory rules. To all intents and purposes they themselves, and not the public, are the judges of what constitutes the public well-being.

But when they seek incorporation it becomes necessary that the government take notice of them. This it does, in most jurisdictions, in a perfunctory way. In some states it is necessary only that the incorporators sign articles of agreement and file them in the Registry of Deeds for the County or with the Clerk of the town or county in which they are to establish their headquarters.

The Granting of Charity Charters in Practice—New York [1] requires that the certificate of organization be written in English; that the petitioners shall be natural persons, two-thirds of whom are citizens of the United States and one of whom at least shall be a resident of the State of New York. This certificate must be filed with the Secretary of State and by copy with the Clerk of the County in which the association is to operate. Its completion of those formalities renders the association a body corporate with perpetual succession and all the other attributes of corporate existence plus the exemptions applicable to public charitable uses. There is no scrutiny of the purpose other than that given by the Secretary of State to see whether it is repugnant to the laws of the state.

Illinois—Illinois [2] will grant corporate existence, privileges and exemptions to any three or more persons, citizens of the United States, for any "lawful" purpose "not for profit" upon their making, signing and acknowledging before any officer authorized to take an acknowledgment of a deed (i.e., any justice of the peace or any notary public) in Illinois; and their filing of the same with the Secretary of State. This certificate must set forth the name (in English), location of headquarters office, the object for which formed, the number of trustees and the names and addresses of those chosen for the first year. Upon the filing of this certificate by copy with the Registry of Deeds for the county in which the proposed asso-

[1] N. Y. L. 1909, Ch. 28. Consolid. Laws., Gen. Corp. Law, Bk. 22.
[2] Ill. R. S., Ch. 32, §§ 159, 160 (Cahill, 1925).

ciation is to carry on its principal business, it *ipso facto* becomes a body corporate. It is left to the Secretary of State to guess at the lawfulness and the non-profit-making character of the purpose. Beyond that the people are not legally interested.

Other States—Indiana [3] apparently does not recognize civic or other associations not connected with some church or religious society, for its laws authorize "any church association" to post notice in three places near the regular place of worship at least ten days before a regular or called meeting to form an organization of not less than three nor more than nine members. They may choose any name they prefer (not already in use); may set out any purpose they please not outside the general scope of "any educational, benevolent, or charitable purpose." A certificate of the election of the trustees made out by the clerk of the new association within twenty days, filed with the Clerk of the County in which the agency will carry on its principal operation, makes it a corporation with full corporate powers.

Ohio [4] will incorporate any five or more persons, citizens of Ohio, associated "not for profit," who will file a certificate of their articles of incorporation with the Secretary of State, naming their place of "business" and the places of residence of the principal officers. By inference a statement of the purpose may be required by the Secretary and the legality thereof passed upon. This jurisdiction declares that the directors of such an eleemosynary association shall be personally liable for all debts of the corporation which they contract.

In Minnesota [5] the incorporators must adopt and sign a certificate stating the name, object and place of operation of the body; the terms of admission to membership; the amount of monthly, quarterly or yearly contributions required of its members; the number of shares of capital stock, if any, to be issued and the denomination; the names of the officers with the time and place of their election or appointment. This certificate must be filed with the Secretary of State and recorded with the Registry of Deeds for the county in which the principal opera-

[3] Indiana Stats. (Burns 1914.) § 4497.
[4] Ohio Gen. Code, § 8651.
[5] Minn. G. S., § 7893 (1923), as amended Ch. 241. S. F., No. 963.

tion is to be carried on. This certificate may be amended by the association, but such amendment need not be published.

In Massachusetts [6] this procedure is varied by the statutory requirement that the Secretary of the Commonwealth shall send a rescript of the application to the Department of Public Welfare, which shall make an investigation of the petitioners, their probable ability to conduct the charter prayed for, the *bona fides* of the claim, and all other matters pertinent to the issue. In this process the Commissioner of Public Welfare is required to conduct a public hearing, with notice thereof to the public once in each week for three successive weeks, preceding.

In form this is a thoroughgoing method of checking up the importance and the probable value of the effort to society; in practice the general public does not often appear at the hearings; and the Department has no power to recommend either the granting or the refusal of the charter sought. It does make recommendations nevertheless, and these are usually followed by the Secretary of the Commonwealth. More than 200 applications have been refused or dissuaded in this manner out of a grist of more than 1,000, since the law went into effect in 1910.

The states just enumerated are representative of the best in social work development. They are therefore typical of the degree of scrutiny thus far given by the public through the mechanism of government to the creation and the legal enfranchisement of all ventures in the public welfare. For the most part the incorporation of charitable bodies is not differentiated from that of profit-making concerns. A general corporation law covers the lot; and is so broad, in its effort to encourage the now almost universal form of business organization, that no notice whatever is taken of the public welfare character of the purpose. The running of a peanut stand is sanctioned with as much ceremony and as much, or more, guarantee of public security as the undertaking of an enterprise which goes among the homes of the poor, separating brothers and sisters, breaking up family groups and taking physical control of helpless children.

[6] Mass. G. Laws, Ch. 180.

Because we are only now—in this present decade—emerging from a basis of contract to a basis of social relations in the development of our law, the emphasis still remains upon the possession and the use of property. Our legal technique in the establishment and the regulation of public charters is confined almost wholly to business enterprises entered into for the profit and benefit of the incorporators.

General Principles—We may conclude therefore that as a general rule the public through their laws as they now stand will grant charters out of hand to any one professing to advance their welfare: and this on an unsupported claim, without investigation either as to purpose, good faith, or method of operation. Persons who desire a business charter must comply with numerous regulations, must file an address where legal service may be made upon them, must show complete compliance with the law as to the organization of business corporations, and must make annual returns. Yet the privilege of carrying on private business is in no sense as likely to do good, or harm, to the public interest as a professed welfare service. The public does not leave to the business petitioner the decision as to what would be beneficial to the public. It fixes set rules with which he must comply. The charity must indicate its purpose but this may be and usually is as broad as a benediction, capable of comprising anything from a day nursery to a scholarship fund or a hospital, anti-drink, anti-tuberculosis, or school lunches.

No charter for the conduct of public welfare service should be granted until thorough investigation of the proposal has been made by competent governmental authority and the probability of benefit established. Grave danger to the common weal lies in ill-considered charitable enterprises that may be noble in intent but are anti-social in practice. Many proposals for charters to-day are advanced by poorly balanced individuals of the crank variety. They are public spirited according to their lights; but they should not be put into the possession of charters which are instruments with which they can do great harm to society.

State Practice of Supervision—There is all the more point to this need for discouraging the incompetent when it

becomes apparent that there is practically no public supervision of charitable enterprises in America to-day. A few jurisdictions require a license to engage in child care.

Indiana, ignoring the accountability of a charitable corporation arising merely from the fact of "its" trust nature, strikes at such palpable evils as have come uppermost to the hurt of some of her citizens, and requires that all child-placing agencies and maternity hospitals shall be licensed as a prerequisite to operation within the state.[7] This applies to Indiana societies and to foreign associations as well. She also requires a bond in the sum of $10,000 from all agencies or persons placing children in foster family homes within the state, conditioned upon the saving of the public harmless from expense for poor relief or other service. No placement can be made without the approval of the government.[8]

Illinois requires that all child-placing agencies shall be licensed by the state.[9] Likewise all maternity hospitals.[10] No child may be placed in a foster family home until after the state has inspected and approved such home. The books and records of any agency engaged in such child care must be constantly open to inspection by the state government.

All private industrial training schools for boys and for girls are subject to the same supervision as state charitable institutions.[11] All private and public agencies dealing with children must make quarterly returns to the state; which records must be kept as a private file.[12] After a recital of these hopeful provisions the statute goes on to provide one supervisor at $2,000 a year and expenses: and not more than four inspectors to perform all the necessary visitation and inspection of institutions and foster family homes. This is to cover a community of ten million inhabitants.

The State of New York, having placed her provisions regarding charitable corporations in her constitution has found

[7] Ind. Stats. (Burns 1914) § 3678 a-o (Amend. Acts 1919, p. 758).
[8] *Idem*, § 3670.
[9] Ill. R. S. Ch. 23, § 30.
[10] *Idem*, § 71.
[11] Ill. R. S., Ch. 23, §§ 219, 269.
[12] *Idem*, §§ 310, 311.

herself under the necessity of a strict construction of terms. The language of that document speaks of institutions and seems to infer that the term relates only to organizations maintaining a plant or place for the care, custody or treatment of persons. It also limits organizations subject to state supervision to such as receive monies from public sources out of taxes. The New York Supreme Court, in holding that the New York Society for the Prevention of Cruelty to Children is not a charity within the provisions of the constitution, said, "The scheme of state supervision was not intended to apply to every institution engaged in some good or commendable work for the relief of humanity from some of the various ills with which it is afflicted, but only to those maintained in whole or in part by the state or some of its political subdivisions through which charity as such was dispensed by public authority to those having a claim upon the generosity or bounty of the state." [13]

Massachusetts, alone, requires a regular accounting by all incorporated philanthropic organizations.[14] The statute recites that all incorporated bodies whose property is exempt from taxation shall make an annual return. Another provision sets up regular inspection of wayfarers' lodges and public lodging houses as well as annual visitation and inspection of all charitable corporations which are required to make annual returns. This latter power is to be exercised however "upon the request or with the consent" of the society in question.[15]

In practice the Massachusetts law works fairly well. Some refusals in the first two or three years were later withdrawn so that at the present time a staff of four inspectors manage to cover a fair portion of the 1,000 active charities each year. Massachusetts licenses all boarding homes, where two or more infants under two years of age are placed, and all lying-in hospitals.[16]

In the present state of social thinking, then, there is in the United States no appreciation of the vital importance to the

[13] People *v.* N. Y. Society, etc., 161 N. Y. 233.
[14] Mass. G. Laws, Ch. 180, § 12.
[15] *Idem*, 121, § 7.
[16] *Idem*, 119, § 2; Ch. 111, § 71.

common weal of the multitude of efforts being carried on in the name of charity and social service. In their inception they are treated like business ventures with no particular business. They are recognized for their supposed good intent and rated as concerns "not for profit," wherefore they are assumed to be eleemosynary, harmless doers of good. They are thrown full armed from the head of the state, and save for the most meager indications in Massachusetts and a few other states, are never given the slightest attention thereafter.

The Magnitude of Private Social Work—The incorporated charities of the one small state of Massachusetts alone control upwards of $200,000,000 in capital funds and spend for all purposes nearly $40,000,000 every year. This is a tremendous force for good, or for ill if improperly or unwisely expended. The community soon must see the importance of careful safeguarding of its own welfare through the preservation and encouragement of sound social service efforts and the discouragement of such as are useless or anti-social.

The future of the charity franchise is in a measure foreshadowed. In the long and painful transition from church to state, from ecclesiasticism as a matrix to civic association as the basis and origin of public welfare enterprises, the true obligation of the eleemosynary trust to the community in which it operates is becoming gradually apparent. Its far-reaching potential for good and for evil is emerging upon the consciousness of the thinking citizen. That it can long escape a full and fair accounting to the public which it serves is therefore not likely. In years to come—and they are not far distant—government will require of the public charitable trust in private hands, first a thorough elucidation of its purposes, its good faith, and its proposed method of operation; proof of the need which it seeks to meet; and tangible evidence of its probable ability to carry out the proposed enterprise, before a charter will be issued. Should the proponents pass this initial test and go into operation, government will then require an accounting at regular intervals, of the husbandry with which the good work of serving the community is being carried on. Such accounting will call not only for a balance sheet setting out receipts and expenditures, together with all holdings and their

condition; but will insist upon a straightforward account of gains and losses in terms of human welfare—the "good" that has been done, the disappointments of the year and the reason, the effect of the enterprise upon the social need or ailment which it attacks and such further expedients which its operation indicates to be advisable for the protection of society. Such accounting, like all other returns of trustees, should be made solemnly and under oath.

Finally, government will carry on careful and regular inspection of the work of its charitable associations. It will visit them through an inspector just as it visits factories, inspects elevators and tests water and milk supplies. Always the mind moves from the fringe of the tangible to the realm of appreciations that can be reached only by reasoning. Filth we understand. Danger from explosions or from exposed machinery or from neglect we can visualize. Typhoid in milk and water we are coming already to recognize as a dread from which eternal vigilance alone can deliver us. The untold harm that may come from mistaken encouragement of the unfit; from pauperization through misplaced charity; from discouragement of family responsibilities through sympathy untempered by reason—these intangible but potent likelihoods of unsupervised and irresponsible charities are still beyond our ken. The time is near in the science of public welfare when this realization too will dawn upon us.

## FOR THE STIMULATION OF THOUGHT

1. Why is there so little statutory regulation in the issuance and conduct of charitable charters?
2. What is the chief purpose in the incorporation of a public welfare enterprise?
3. Sketch the principal provisions of a model law for the incorporation and public supervision of eleemosynary enterprises.

## FOR FURTHER READING

*American Journal of Sociology*, July, 1914. "The Charity Franchise."
*Proceedings N. C. S. W.*, 1917, p. 364. "Supervision of Private Charity Enterprises."
*Mass. State Board of Charity. Annual Reports.* P. D. 17. 1912 to date. Part II.

## CHAPTER VIII

## THE RELATIONSHIP BETWEEN PUBLIC AND PRIVATE ENTERPRISES

In any government, instituted by the people who live under it, as a service to those interests which they have in common, the individual ceases to be the serf or the vassal or the retainer of an overlord. The divine right of kings becomes the inalienable sovereignty of the whole people. Consequently every person living under such a commonwealth is himself a sovereign invested with the right to govern himself through that coöperative association which we call government. And as a corollary to the proposition that his commonwealth is derived from no exotic authority but rather from him alone, it follows that he must hoe his own row or become a burden upon the whole people.

Theory of Governmental Responsibility—When a man falls ill with tuberculosis and is able no longer to earn, he must fall back at once upon his accumulated wealth, if he have any, and that failing then upon the charity of his kin. Through the course of ages, during which the patronymic family has been the unit of society, kinship has been held to carry obligations of support as well as rights in persons and property. The patient's kin are held therefore, not as a direct obligation flowing from individual to individual of the same blood but as a right vesting in the community which can be validated only by requiring that the blood kin assume such liability. This responsibility is confined within narrowly defined limits and runs usually in the line of consanguinity, up and down. Seldom if ever does it include collaterals.

Public Relief Local—If there are no kin of the direct line, required by law, nor any kin of any sort willing out of charity to help him, he must be at the mercy of his neighbors. These obviously have no legal obligation towards him; yet there is in the philosophy of public relief a principle which

argues that one's neighbors are more responsible than those citizens who have no local contact and live perhaps at the distant confines of the jurisdiction. This is the principle that out-relief is local. Its basic theory is that in cases of dependency, where the law requires society to relieve, it will begin first with those who are neighbors and townsmen. Out of this reasoning grows the law of legal settlement. Where a man lives, where his children are bred and reared; there, where his life is spent, his food and shelter provided and his adjustment to his social environment made, that is his real dwelling place, his abode; and those, his neighbors, who have been nearest him in his days of validity, shall be first to succor him in his distress.

But the peaceful, bucolic life of long ago has given way to struggling congestion of population in which the home and the fireside are hard to identify. Space forms no boundary in modern social life, hence the identification of neighbor and villager is increasingly difficult. The whole community must take upon itself much that formerly might be left to the individual. But in the absence of statute, the neighbor or townsman has no liability; and in the presence of a settlement law and a law requiring local poor relief, the patient can, himself, have no legal claim upon his neighbor. The right lies, if at all, in the community and can be validated only by imposing the responsibility for its own benefit, not the benefit, in the first instance, of the patient.

Now let parent or grandparent or child or grandchild or neighbor or townsman fail him, and our patient becomes dependent for food, shelter and treatment upon the whole people, in fact, just as in theory, he was, the moment his own property and the power to acquire property failed him.

What shall society do with him?

It can let him die. In badly overpopulated communities of the past and perhaps in a few of the urban centers of misery of our present-day civilization, infanticide has been an expression of this method of treatment. Nature would let him die, but human society proceeds upon an ethical basis of equal opportunity, out of which is born the altruistic principle of "live and let live," and the theory that each citizen is a positive

value, real or potential in society. By this ethical philosophy, for instance, it becomes the gist of the offense of murder that thereby the state has lost a citizen, a thing of value. And so here, if the patient is allowed to die,—no matter how weak, no matter how unlikely to regain self-support,—society has thereby lost a citizen, a thing of value. He must be succored if possible.

Society can decide to succor him. If so, the problem then becomes one of method. It may and usually does make its first attempt by finding an individual or a class of individuals whom it declares on a basis of equity more responsible under the circumstances than any one else, placing upon them the primary burden of support. But as such person or group cannot be found in all cases—indeed will fail in a large percentage of the cases—society must go further. It must say that if no one is more responsible than another in the whole commonwealth, then the load shall be apportioned equally upon all. Arriving at this stage we have the familiar statutory provision of public relief out of taxation. Let this then, roughly stated, represent the theory of public responsibility for the support of the individual who cannot support himself. What is the legal status of the governmental instrument chosen to carry out this obligation to relieve, and what is its relationship to the people, the sovereign, by whom it is created?

Legal Status of the Governmental Instrument—The first principle emerging from an inspection of the public welfare instrument is that it is the creature of the people brought into being not through that slowly crystallizing public opinion as to what is right and what is wrong—the common law—but rather through express declaration of their sovereign will, that is, through statute. Statutes are written expressions of the will of the people. They are concrete in their nature and are never to be taken to mean what they do not say or unmistakably imply. They are to be construed strictly.

Being thus a creature of the people, set up by a strictly construed expression of their will, the public welfare department becomes in law and in fact an agent of the public will, as narrow in scope and discretion always as that expression, the statute. It is a trustee of the people, with concrete instructions

as to its duties. It is supported by appropriations from the store of money held by the people in common, raised by them through taxes, allotted in the abler jurisdictions through itemized budget systems.

In order to make clearer the relationship of public bodies of this sort to private social service enterprises in actual practice, it is pertinent to this analysis to inquire somewhat into the tendencies and weaknesses of the public department.

Inherent Weaknesses of the Public Department—Its first limitation is that it has little discretion or flexibility in the method and extent of its functioning under its enabling act. If the law says, for instance, that mothers' aid can be given to mothers and their dependent children under fourteen, relief cannot under that law be extended to a child of a mothers' aid beneficiary who is fourteen years and one day old. The fact that officers frequently wink at the law does not render their transgression of the fixed boundary any the less illegal.

The second serious limitation is that as the creature of statute and the instrument set up to carry out the public will, it is seldom able to meet problems when they arise. It appears on the scene long after the fact. In truth, social needs cry aloud for relief, sometimes for decades, before the sovereign people get round to expressing their will in the matter at all. Hence the public department follows long after the fact and is for the most part a remedial and palliative agency. Discretion sometimes granted in our organization statutes, as the power in Illinois and Ohio to carry on research, does not impair the solidity of this principle. In fact, such discretion could seldom be exercised if personal interest should become aggrieved.

The third major defect is found in the lack of a long-time policy of operation and a woodenness of procedure in expenditures. When the appropriation is spent, no further liability can be incurred. The sovereign people must speak again, showing their willingness to spend more.

A final stricture upon effectiveness in the public service lies in the refusal of the people to pay salaries sufficient to attract skillful workmen to a difficult service. The result is mediocre personnel, necessarily protected from politics by more or less

wooden civil service systems which yield quantitative rather than qualitative values.

But the revolution of the last century in the law is echoed by a parallel in government. Whereas the law was formerly based upon contract—the law of property and property rights—it is coming, through the necessity born of human congestion, to rest upon social relations—the law of persons. In terms of government this means that the individual is becoming the great asset in community values; and departments of public health, corrections, education and the public welfare are coming more and more to be thought of as leaders in the development of the philosophy and the method of public services looking to community betterment. It is out of this basic change in human attitudes that has sprung the remarkable development of public departments during the past decade in the several states of the North American union. No more spectacular development—save perhaps this growth of federations—has come about in this century than this rebirth and rapid expansion of our public departments.

THE VOLUNTARY ENTERPRISE—Bearing in mind this analysis of the public welfare agency, what justification can be found for the existence of private associations in the field of social work? Obviously the field of operations is not divisible. Poverty and dependency, delinquency, prostitution, disease, feeble-mindedness: these have a sameness which forbids any strict dividing line between the efforts of public agencies and voluntary societies. They must both deal with the same subject matter. If they vary at all, therefore, it must be in the character of their respective approaches to the problem.

Voluntary effort in public welfare service arises out of the initiative of some one individual who sees or thinks he sees an evil in society which is capable of remedy but is either neglected or is not adequately met. Single-handed or with the support and coöperation of others of like mind, he sets out to cope with the problem, or selects agents who will carry out his purpose. Such a combination of individuals is like the government department in that both are associations. Each carries its mandate, if any it have, from the whole people. Neither is

independent of the whole people. In theory, then, they are both equally the servants of the people. But they differ in practice in this one vital particular, namely, that the government department operates under the constant and immediate control of the whole people which says "these things you must do and account constantly for your conduct therein," while the private association stands detached from direct control, functioning under a written permission of the whole people which says in effect "these things you are at liberty to do provided you do not transgress the express limitations of the law." It is all the difference between a mandatory and a negative injunction.

Testamentary Trusts—The most familiar type of voluntary enterprise is the charitable trust set up by a will. The testator, desiring to render some service to society and hoping, as in most instances, to perpetuate his name and influence after his death, leaves property for the purpose of carrying out some specific effort looking to social betterment. He may establish an orphanage for children, a hospital for the sick, or a home for the aged. His right to set up such an institution and the sanctions which the law has set about a testamentary trust are more fully explained in the next chapter. At the time of making his declaration he chooses certain persons to carry out his will; and these, perpetuating themselves by the method permitted in the document of their creation, become the trustees and managers of a voluntary public welfare agency. The majority of private charitable agencies now operating in the United States have originated in this manner.

Public-spirited Citizens—A less usual method of establishment, but a constantly increasing method, as the civic nature of charitable enterprises becomes more clearly seen, is the small committee—evolved out of the initiative of some individual advocating a reform or the combating of some specific social ill—which seeks a franchise from the government for the purpose of carrying on a charitable service. It may have the promise of gifts or it may seek its franchise purely upon its faith in the generosity of public-spirited citizens when the worth of the undertaking shall have been presented to them. In the small jurisdiction of Massachusetts there are some fifty

such charters granted each year. Examination of the subsequent activities of these new ventures indicates that about thirty of them die within a year or two, and that among the survivors are apt to be those which have substantial trusts to begin with, while among the deaths are most of those which have set out on faith in public generosity, and found their faith greater than their power to attract support.

The rule of thumb in American citizenship is that the individual may do as he pleases provided his conduct does not harm his neighbor and is not contrary to the interests of society at large. For practical purposes he finds the gauge of such harms in the prohibitions of the law and will go as far as they permit. But there are always in our citizenship a considerable number of individuals who are public spirited—who feel a keen responsibility for the welfare of society, and who recognize the fact that government as a service to democracy must function out of the constructive thought of its citizenry. They therefore seek to lead the community in combating social ills, exercising to this end that wide range of personal liberty which gives the American citizen his world reputation of individualist.

This voluntary group may not know much about the theory of government or the philosophy of social service—usually it knows little—but it has a purpose which it believes to be consonant with the public well-being. Most frequently that object is bound up with the religious or denominational interests of the promoters. So highly respected is this good intent that the law hedges it about with extraordinary protection. If it acquires property the law declares it to constitute a trust for the benefit of the indefinite public. The trustees may not convert it to their own use, but on the other hand it may accumulate forever, being wholly free from the rule against perpetuities, applicable to private trusts. Its property cannot be reached by attachment or execution in favor of a private interest, even though that interest be a claim for labor rendered or supplies sold and delivered. Its funds are free from taxation on the theory that they belong to the public anyway and taxation is in such case only a transfer from one pocket to the other.

For purposes of organized social service enterprises, the law

has never declared what constitutes the public welfare, hence there may be conceivably as many definitions as there are agencies in the field. Let the voluntary organization but declare that its undertaking is not for profit and the law will declare it to be charitable and straightway invest it with all the immunities and exemptions of a charitable trust. A board of directors of a charitable agency is for all practicable purposes a law unto itself. If it wishes to break up a family of the helpless poor it does it. If it thinks a brother and sister are better off separated it parts them. If it deems an unmarried mother incompetent to keep and nurse her baby, it takes the infant away and places it in an orphanage, or in a foster home, or offers it for adoption, as it pleases. It can accept the last $500 owned by the aged applicant for its old ladies' home and put her in a room with other old ladies as crotchety as herself or worse, leaving her to repine in unhappiness. Whatever it may do in these particulars it decides upon its own judgment without let or hindrance from the public which it serves, save for those obvious restrictions upon wrongdoing and those safeguards of public policy which are too blunt to reach the refinements of social case work.

Handicaps of the Private Enterprise—As an effective instrument for the protection of society and the furtherance of the public welfare, the private agency labors under sundry handicaps. Most important among these is its obvious lack of legal authority over the person. While a private society may receive a child into its care, its power over such child as against the rights of the parent is limited to the express sanction contained in its charter. It does not take custody. It is not guardian. It cannot decree adoption. Neither has it power over its client's property except through contract. As against the public agency the private society is infinitely weaker as an agent of the sovereign people where custody or control of the person are concerned.

A second important weakness is found in the inflexibility of testamentary trusts. Benjamin Franklin dies in 1790 leaving $3,000 for the relief of young artisans on condition that the capital fund shall increase for one hundred years, after which the income is to be lent to young artisans with which to buy

tools. Meanwhile the young artisan needing his separate kit of tools, vanishes, and the member of a labor union appears in his stead. The loan fund finds no takers and becomes inoperative. A manufacturer dies in 1878 leaving his factory and other property for an institute of industry for the training of a narrowly restricted class of boys in "the business of agriculture." The trust goes into operation and continues for forty years by which time the restricted class has practically disappeared and the trust becomes inoperative. A home for the aged, having trust funds limited to the maintenance of a home only, finds a greater need for relief outside its walls than it finds inside, and discovers through analysis that it can do much more good by out-relief, yet it has no funds for such purpose and cannot reach beyond its building. So inflexible is this testamentary trust that in a state like Massachusetts, where there are 112 private charitable homes for the aged, we find the public homes or almshouses better classified and far in advance of the private homes, in the modern development toward infirmary care on a hospital basis for the aged infirm, leaving the ambulatory cases for out-relief. The private homes still continue for the most part to receive only the applicant who has money enough (from $300 to $1,000) to get in; who is able-bodied enough to come and go about the house; and who is happy and cheerful enough in disposition to fit harmoniously into the household. Frequently the most needy old folk lack all three. The dead hand of the past reaching forward into a new world of the present with its constantly changing human relationships thus reduces the efficiency of more than half of all our private charitable trusts and renders some of them antisocial.

The limitations of testamentary dispositions are less damaging to the great civic enterprise than limitations of religious denomination. The church is the matrix of organized charity. In all times men have recognized their moral duty to the church before their civic duty to government. Hence it is that the moral duty to lift up the fallen and to succor the weak took shape in private benevolences long before communities of men undertook through their association of government to extend relief to the socially inadequate. With the separation of church

from state the basis of social work has become civic, supplanting the older foundation of the sect or religious group.

But the mechanism of charity is slow to change. Consequently the modern American city contains a multiplicity of restricted church relief and child care agencies with only a small, though increasing nucleus of civic foundations in social work. The result is factionalism in the face of a community need for oneness of program in combating social ills.

A third limitation on private activity arises out of the lack in many instances of sufficient capital funds to guarantee continuity of service. As the volume of relief is heaviest when business is dullest, and as hard times make benevolences fewer, the agency which must depend entirely or in great part upon current gifts falls helpless beneath the mounting grist of cases thrown upon it by business depression. To a degree still all too slight, the charitable trust, the income of which is distributed among social agencies at the discretion of the trustees, is coming to serve as a reservoir or sinking fund for such unstable agencies. The newer district nursing and tuberculosis associations are peculiarly subject to such maladjustments between income and case load.

A fourth handicap of the private agency arises out of the lack of public oversight. The American public knows little and cares less about the work of private social agencies. There is no one to watch the daily round of the agency staff save an executive responsible to a board of directors who meet at intervals but do little else in the way of oversight. There is no public review of the decisions of such a board on matters of public policy. They may put into their annual report just what they please and as little as they please. Such general supervision as governments are beginning to take is still for the most part subject to the consent of the agency supervised. The influence of the religious group continuing on from an older order of things is responsible for this civic timidity on the part of modern government. In spite of this serious bar to excellence, the observer may find a remarkable degree of good intent and a fair percentage of efficiency. But the tendency is always toward laxity, and only the enthusiasm of the modern case worker stands against it.

Finally, the private agencies are so far isolated from each other in their several lines of effort, so disintegrated as a coördinated force working for social betterment, that each must unavoidably follow the policy of cut-and-try. Each is in fact engaged in a frolic of its own. New departures are entered into as experiments in the hope that a sound justification for the service may develop and that a new method of combating social evils may be discovered. Such new departures in social service may be undertaken as the need arises and in an effort to meet the need. Unlike the functioning of the public department, the private agency is not required to wait for a long demonstration of the need and a written mandate from the people. It can decide, by a vote of its board of directors, to go ahead with such funds as it has or thinks it can raise. It need not use methods established by long usage as feasible but may invent new ones. It is not necessary at the outset that the whole public have confidence; it is enough if the board of directors vote it. In a word the private organization may pioneer where the public agency may not.

The Oneness of the Field of Service—Perhaps enough has been said already about the oneness of the field of public welfare service. It may serve to clarify any logical allotment of the field between these two instruments of service if some of the more important similarities are reëmphasized.

From the point of view of the individual there is no place at which his continuing condition of distress can be divided. He is the same person and his misery has no two complexions, whether he be helped by the public or the private agency. The family is the same and its difficulties in rehabilitation are not changed by reason of the auspices under which help is extended. The development of a supervised playground in a tenement district will face the same needs and receive benefits of the same nature whether it be run by a neighborhood association of ladies or a public park commission. It is only a matter of bookkeeping to the old man dying of cancer whether his hospital bill is paid by a private hospital fund or by a poor relief appropriation from a city budget.

The field of social service effort is of one warp and one woof, woven of a myriad social contacts and relationships, crying

out with the same needs and for the most part demanding the same recognized methods of treatment.

Is there then any practicable classification of tasks by which greater efficiency in service can be gained through the assignment of a definite part of the load to the public agency and retaining an equally concrete sector in the charge of the voluntary agency? Above all, is it possible to draw such metes and bounds about these respective channels of effort as will indicate whether the presence of both is necessary to public welfare service, and if not, when the one agency or the other should be discontinued?

The Dividing Line Between Public and Private—In seeking to map out the dividing line between public and private agency functioning, an obvious query immediately arises. It is foreshadowed in our discussion of the nature of the public department. If the public agency is the creature of statute which defines or assumes the social problem and outlines the method of treatment, how shall the public obtain the knowledge of social ills upon which to base an intelligent expression of its will? Whence comes the knowledge upon which to base legislation? It can hardly create a board or agency with a roving commission to hunt up social problems. It does in fact set up boards of special inquiry but almost never do such bodies come into existence until after influential groups of citizens have represented a need, and usually it is a critical need. Government almost universally functions only after the fact. In terms of preventive social service this is all too late. In some fashion a process of experimentation must be kept going. In practice this is found in the efforts of the private social agency.

The first major classification between public and private agencies therefore is that in the main the public agency administers relief and other public welfare measures, while the private agency experiments in the field of problems and methods not yet fully demonstrated as practicable for social legislation and the functioning of governmental agencies, for the cost of which the whole public is to be taxed.

Thus the care of aged dependents who are without relatives liable or friends willing to help them has been for centuries recognized as a duty of the government. There is no longer

any doubt about it. But whether it is sound public policy to pour tax money into the family budgets of mothers with young dependent children, where there is not enough support to keep the home together, the breadwinner being sick or dead or in prison or a deserter, is a problem containing many doubts. It needs experimentation to discover whether such aid would tend to pauperize instead of help those children toward solid citizenship. Governments in the United States are now assuming this obligation but their reasoning is obscure and the problem still is ill digested. Mothers' aid is in the transition stage between experimentation by voluntary groups and administration by the public departments: and this despite the fact that forty-two out of forty-eight states have enacted it into law.

A second important division has to do with the liberties of the individual. Governments no longer farm out the custody of persons to private individuals; nor do they as a general practice give the private individual a right to take and to hold either the person or the property of any other private individual without carefully guarded court decrees. The reason for this attitude is that control of the individual is an act of sovereignty which can be exercised safely only by the authorities constituted directly by the people.

A good rule of practice therefore in the division of this field of public welfare effort is that all cases calling for custody or control of the person should go to the public agency. Thus when a man, becoming violently insane, rushes through a public square, firing a revolver at passers-by, the police are the appropriate agency to step in and protect the public and the insane person from further harm. And when he is eventually declared by decree of court to be a menace if left at large, the public institution as against a private hospital or detention home is the proper agency to take custody. The same reasoning applies to the feeble-minded girl with abnormal sex tendencies; and to the illegitimate child abandoned on a station platform. The remedy in each case involves custody of the person. Other examples are the wandering mendicant and the juvenile delinquent.

But however the burden of this service be apportioned between the public and the private instrumentalities, it must be

obvious that the whole field should be covered. If the law, after long demonstration—as in outdoor poor relief—declares that overseers of the poor shall relieve all persons found in distress within their respective jurisdictions and without the necessaries of life, but further declares that the overseer charged with the expenditure of money shall not lay out more in the course of the year than has been appropriated to relief uses, and only half the necessary amount has been appropriated, some cases of distress must be unrelieved if it all depends upon the public agency. If then there are private relief agencies in such jurisdiction, they should supplement the public appropriation with relief of the surplus of unaided cases until such time as the public can be induced to make its appropriations adequate.

The Private Agency Supplements Public Agency—Subject to the limitations previously mentioned, the private agency must always to a considerable degree supplement the public process: it must in a genuine sense be as the old law of Elizabeth expressed it, a reliever of the burdens of government.

Keeping these broader distinctions in mind, a practicable division of the field would be as follows:

1. The whole field should be covered.
2. The public agency should handle

a. Those problems fully demonstrated as equitable, practicable and appropriate for the whole people to deal with, out of funds raised by taxation; such as the relief of the dependent poor.

b. Where there is inability to relieve all cases falling in Class A, the cases requiring long continued help, such as the chronic sick, should be taken first.

c. Problems involving custody or control of the person, such as the abandoned infant, the delinquent child, the lawbreaker, the insane and the mentally defective.

d. Cases in which criminal prosecution or other court action calling for restraint of the person are indicated.

e. Cases calling for dealing with the constituted authorities of foreign jurisdictions, such as the return of runaways or wandering mendicants to places outside the jurisdiction.

f. Research into recognized fields of inquiry, in search of facts and conclusions vital to the competent execution of the Statutes and their development in the interests of the public welfare.

3. The private agency should handle

a. All problems fully demonstrated as proper for public administration whenever the public agency for whatever reason fails to meet it; subject however to a positive program of public education and persuasion of the lawmakers to make or permit the public agency to assume such uncovered problems.

b. All experimental undertakings meeting social ills and designed to discover and to demonstrate the propriety and the feasibility of public assumption, such as rehabilitation of families of mothers with dependent children, prenatal care of expectant mothers, etc.

c. Research efforts not connected with the actual relief of individuals but seeking to appraise the nature and extent of social evils sensed but not sufficiently identified.

Thus far our classification deals mainly with case work—with the field of remedial relief. What shall we say of the mounting volume of social work devoted to character building through mass treatment, and with educational processes such as health education, prenatal clinic instruction, the encouragement of immunization tests, and the like? American practice has already launched the government into the most extensive educational experiment man has yet undertaken. The American public school system provides the most fruitful point of contact between the public and the child. The unusual value of this channel of approach is now recognized, with the result that we are at the moment of reconstructing the curriculum of the public school by substituting a basis of sound physical and health education for the former groundwork of mere book-learning. In this manner the school as a governmental agency is undertaking extensive processes of physical and mental examinations, immunization against epidemic diseases, posture correction, the removal of speech defects and the repair of tooth and eye troubles.

But it will be noted that in this development the public agency but follows the demonstration of the private agency already carried out. The private agency has tried out the district nurse and by proof of her value has shown the wisdom of an extension of this community service to the school nurse. The voluntary society has brought the school lunch into being; has shown

the preventive value of the posture class and the dental clinic. So that though the public appears to be doing a great deal in the way of health education, it is in fact acting well within the foregoing classification.

It will be noticed also that research is recognized as a function of both public and private agencies. Private agencies have so far demonstrated the usefulness of scientific research, and governmental bodies themselves, such as the Children's Bureau and the Department of Agriculture have found the analysis of social problems, so essential to public welfare service, that such studies must be recognized as a duty of the public department within the limits of its statutes and the money grants made to it from public funds.

Social agencies fall far short of coöperation on such a basis as that set out in the foregoing classification at the present time. The private agency is not concerned as a runner-up for social legislation and public-department assumption of proved functions. It sets itself up as a private venture of a charitable nature for which the public in general and the government in particular should be grateful. This private agency most frequently looks upon itself as superior and quite out of the class of the governmental department. It betrays its royal blood too often by reference to its clientele as persons saved from the stigma of pauperism and the shame of public relief. Its staff and its directors are somehow holier than the humble public servant who should wear sackcloth. All too often it speaks with pride of saving from the misery of the almshouse some aged widow who has seen better days; or from the pauper care of the city or state some child of a family that once had pride and social position.

Such an attitude is a survival of the time when government was not democratic and class or denominational narrowness recognized its group as larger than the community; wherefore it assumed the burden of its own dependents. Government, now looked upon as a coöperative service to the whole of society, tends to assume such factional burdens, wherefore this clannishness tends, though slowly enough, to disappear.

The public administrator, too often a functionary of mean abilities and small outlook, is apt to feel his official character

and look with uncompromising scorn upon the private agency which has nothing better than a permissive standing in the community.

Neither group looks upon the field of effort as indivisible in its nature. Neither sees that only by coöperation can the whole task be covered. Too many servants in each group think of the others as interlopers in their particular bailiwick. The private agency considers the public body as permanently incapable of handling the delicate problems of human interrelationship with the master hand of the private group. At the same time it does not hesitate to refuse the unpromising case either from the point of view of reimbursement or the promise of rehabilitation, leaving this for the public department. It wants the case that will make the best showing of successful treatment, and while it has the full power of choice it tends to exercise it in favor of the gilt-edged case, turning the poor prospect to the government which cannot refuse it.

The public agency accuses its private neighbors of dumping its undesirable problems, and claims sometimes that the private trust is run for the glory of the directors and the good showing of its staff, rather than the aid and succor of the unfortunates named in the charter purposes.

The public official believes that the only proper instrument for social work is his own and that the existing private agencies are only a survival of an age now outgrown.

There is Need for Clear Thinking in This Field—So long as workers on both sides of this dividing line remain personal in their appraisals and estimates, failing to perceive the nature of the field of work and to analyze the methods appropriate to service therein, there can be little hope for a proper accord between them. But let these factions once see clearly the relationship which should logically obtain between them, and a new interrelationship is likely to spring up. Already the work of the public department groping toward something more like leadership of public opinion in the field of social work is beginning to exploit the potentialities for helpfulness in the private agencies. And the wiser private groups, especially those on a non-sectarian basis, are beginning to range themselves squarely behind our public bodies, giving

them moral support in their stand for better social legislation and greater freedom from political interferences.

PROGNOSIS—Community consciousness in the United States is growing at a rapid pace. Already the public is beginning to exercise its sovereign police power as against even the vested rights of the individual to set the community house in order. Cities are zoning themselves. Playgrounds and open parks are now looked upon as necessaries of municipal life, instead of fads or civic advertisements. Thought is given extensively to physical and mental qualities in citizenship as more basic than proof of progress through mere growth in numbers.

Out of this social consciousness will come a shortening of the time-gap between voluntary group demonstration of expedient public departures and the assumption of such new courses by the government. This in turn will mean less mere remedial charity by the private group and more experimentation with social problems. To which change will be added a secondary reverberation in a tendency now observable in some degree to make large private gifts to research and demonstration rather than to remedial relief. The near future will not upset the basic reasoning of the dividing line already described, but it will show an enormous extension of governmental ventures in the field of public welfare with a corresponding decrease in voluntary remedial charity. The transformation from a denominational to a civic basis in private social service must inevitably spell the knitting up of the social program, public and private, into a more coherent system of civic protection.

## FOR THE STIMULATION OF THOUGHT

1. Recently a captain of industry is reported to have left a sum totaling many millions for the establishment and maintainance of an orphanage in a community overstocked with institutions for child-care, and at a time when social workers consider the establishment of orphanages, as such, to be unwise. Contrast this incident with the practice, common in colonial days, of giving cattle, or a wood lot, or a sum of money, to the use of the overseers of the poor, to be expended in charity. Why should private citizens be permitted, as a virtual condition of their gifts to public welfare purposes, to define for themselves what constitutes the public welfare and to dictate the terms under which it shall be served? Should the government ad-

minister all public welfare services? What are the reasons, *pro* and *con?*

2. The author has heard visitors from Canadian and from English cities frequently express surprise and wonderment at the distrust which social workers in the States seem to entertain for our governments, especially the governments of our cities. Is it true that municipal government in the United States is too incompetent and too corrupt to administer public welfare services honestly and efficiently? If so, do you consider this condition to be a passing phase; or is it inherent in the form? Would you trust social work in larger measure than now to public employees?

3. Is private charity a survival of the old aristocratic practice by which the rich and powerful diffused alms among their retainers and others who begged of them or were found in want? How do the self-appointed trustees of the public well-being, in these modern times, excuse their interference?

4. Financial federations, in their campaign appeals, often represent to the prospective giver that it is his moral duty to give; that in accordance with what he has received he should give to the poor; that the community problem must be met and he, if able, is obliged to help, etc. How does this reasoning differ from the theory of taxation? Why should a private citizen be taxed for public charities and "driven" for voluntary gifts at the same time?

5. Why is it necessary to suppose, as implied in this chapter, that public departments will never be able to do their own experimenting in the field of public welfare methods?

6. Which is more important, public or private social work?

## FOR FURTHER READING

Breckinridge, Sophonisba P.: *Public Welfare Administration in the U. S.*
Odum, Howard W.: *Approach to Public Welfare and Social Work.*
Odum, H. W. and Willard, D. W.: *Systems of Public Welfare.*
Queen, Stuart A.: *Social Work in the Light of History.*
Warner, Amos G.: *American Charities.*
Webb, Sidney: *The Prevention of Destitution.*

## CHAPTER IX

# MODERN METHODS OF ADMINISTRATIVE ORGANIZATION: STATE, COUNTY, MUNICIPAL

The theory of checks and balances, of which the government of the United States is reported to be the world's foremost example, is in purpose a method of keeping government from becoming too strong; in practice it keeps it from becoming efficient. So long as there has been an oppressed proletariat this theory in some form has lain in the minds of men. Its formulation for American purposes goes no further back than the brilliant Montesquieu. In his day the riddle was to shoulder off oppression by a privileged class. He expressed in an alluring formula the very heart's desire of those aggrieved Englishmen who came to America to escape the tyranny of a ruling class in church and state. They grew to a condition of strength, and at once threw off the yoke of the mother country. Then came the new riddle. How should they work out their organic law,—the framework of their government? Should they have a king? No! Should they have a House of Peers? Never! There was to be no such thing as royalty or nobility. Should it be a people's rule? Yes, by all means! But if such a government were to be set up, what should prevent it from becoming tyrannous and the beginning of a new dynasty? Power feeds on itself. It needs only opportunity.

In this quandary the theories of the French philosopher were seized upon with avidity. We would set up the elements of government—the law-making body; the servant to enforce the law and to execute the services due the people; and finally the determiner of justice under the law. And having set them up we would so balance their powers that none could function without the others. None should be supreme. None should escape far from the commanding voice of the people.

THE AMERICAN SYSTEM OF CHECKS AND BALANCES—So

we set up a law-making power—duplicated in each of our several states—consisting of two houses, variously chosen; neither of which might act independently of the other; either of which could negative the other: an admirable instrument for the slow and careful determination of a single vital issue in a session; hopeless in the dispatch of thirty thousand. In the executive office we placed a President, so named with trepidation, intended to be a servant of the Congress but with important checks upon Congressional initiative. His replica with the title of Governor sits in the executive office of each of our states.

And having established these two branches with little certainty of agreement except in checkmate, we produced the crowning glory of our system, the judiciary, ablest of our creations because best understood by the makers of our Constitution and least feared. Championed by Coke the civil courts for decades before the settlement of America had been the defenders of the liberties of the people. This branch is made the interpreter of the Constitution; its guardian against the encroachments of legislation.

No nobler monument to Montesquieu could have been built than this world-stirring Constitution of the United States. Its checks and balances were so delicately weighed that a meticulous minority could stall it hopelessly. But times change and human society must satisfy its needs as best it may. The theories, the customs, the beliefs of one century give way to new knowledge in the next. The needs which spring into being with the passage of the years call for new devices in industry, in science, in government. In this manner it has come about that without essential change in our American Constitution, our system is no longer one of effective checks and balances. Our Congress, facing some thirty thousand proposals for legislation each year must needs expedite its business, with the result that all but a mere fringe of all such proposals are strangled before their proponents are conscious of having had a hearing. The grist in each of our states runs into the thousands at each session. The annual output of statutes in the United States exceeds twenty-five thousand. Vital issues are settled by an

inner coterie; dramatic non-essentials are frequently given an histrionic airing on the floor.

Changes in Practice Without Changes in Organic Form—The first President of the United States, a famed military commander, laid down the reins of leadership when he entered the White House. Yet the most powerful war lord since Napoleon was that President of the United States who in the one hundred and thirty-first year of our governmental experiment left his Congress dancing attendance; sailed away like the Argonaut; dictated the peaceless sequel to a peace enforced largely by the powers of his own armies; and returned as came Cæsar back to Rome. The President of the United States is to-day the most powerful ruler in the world, and this without basic change in the framework of our government.

The Increasing Duties of Modern Government—The wide departure from a system of checks and balances which is still in process, arises out of changing public needs. The governments of our several jurisdictions are required to attend to many intricate engineering tasks; the building of highways that must bear in a year the weight and stress which not a century of old-time traffic would have imposed; the development of water supplies, beside which the mighty aqueducts of Rome, built by puissant monarchs with unlimited slave labor, are pigmy; the discovery somehow, by some capable method of housing, of a place to stow the mounting population of the most rapidly growing cities the world has ever known. These and scores of major problems confront the governmental servant of the people of these modern high-speed times. It is small wonder therefore that we find boards and commissions without number, charged with duties the most elaborate: here a body running a fleet of ships; here another dictating to all intents and purposes the rates charged on common carriers; everywhere accident boards with judicial powers to determine liability under a workmen's compensation law which has taken unto itself—and that too with the approval of the guardians of the Constitution—powers assumed since the days of Coke to fall within the province of the common law. The movement is now started to take sundry violations of automobile regula-

tions from the criminal courts and adjust them on a civil basis in the presence of a captain of police.

Thus we are ever drifting—have finally arrived—within the shadow of that dread tyranny against which all these checks and balances were created. The truth is that tyranny of this sort in the modern world is a good deal of a bogey, and we have become at least dimly conscious of the fact. That social necessity which we found to have supplanted contract as the basis of the law is driving us to make these changes for the sake of efficiency. Modern government calls for experts carrying a high degree of trust. It is that or nothing.

Three Divisions of Government Still Basic—Yet the three divisions of governmental functioning are not to be cast aside as no longer serviceable. Viewed as coöperative elements of a single mechanism they are logical and necessary to effectiveness. A failure to recognize them soon shows up in the ill logic of results, as where a tribunal of justice is given the duty of dispensing public poor relief in the form of mothers' pensions; or a legislature undertakes through an emergency committee of its own to administer a prison. The imposition upon a common law court of any duty other than the determination of justice among men is fraught with grave danger to the fabric of government, and is therefore to be avoided.

For purposes of an analysis of public welfare mechanism it must be appreciated that we have to deal with a multiplicity of overlapping governments. First is the village, the town or the municipality; second is the county, including the first; third comes the state, inclusive of both; and finally the federal government, supreme above all in matters of conflict within federal powers. The immigrant residing in a town in Massachusetts, who finds himself in the House of Correction for a serious offense, is detained and housed by county authority. His dependent family are relieved by the Overseers of the Poor who are officers of the town. But as he has no legal settlement in his new habitat, the Commonwealth reimburses the town officers for the relief given his dependents and may remove them if necessary to the State Infirmary. Finally the offender himself is subject to deportation by the United States

government under the federal immigration act. In the every-day operation of social work instances constantly arise in which two or more jurisdictions are involved. It is the purpose here to describe briefly the mechanism employed by each of these units of government to carry out their distinctly public welfare enterprises. In subsequent chapters under special headings may be found the more detailed description of the organization employed, as for instance, in the discussion of "Poor Relief," "Corrections," "Care of the Insane."

As the mechanism of governmental services in the special field of the public welfare is uniformly the creature of statute, and the functions—the sum total of the commands to public servants engaged in it—are derived solely from the enactments of the legislature, it is pertinent at this point to inquire more particularly into the nature and function of legislation. Such consideration is essential also to a full understanding of that large and increasing volume of administrative justice which we find ourselves turning to more and more in the new century.

The Nature and Functions of Legislation—The public speak of the statutes familiarly as the law. We forget, if ever we knew, that while the statutes may and do relate to the law, and that they exist as an adjunct of the law, clearing the way for its more perfect functioning, they are not the law in any fundamental sense. Law is custom. The unwritten law, discovered by our courts in the process of determining issues looking to the doing of justice between man and man, is law in the scientific sense. A statute establishing a department of police, a commission on railroads, a metropolitan water board, is not law in the basic sense. It is a business rule of that civic association which we know by the other name of government, for the better ordering of its business. Such statutes are properly denominated "public" as contrasted with "private" or basic law.

This is a fundamental distinction. Law is not made by the edict of a despot or the mandate of a majority. It grows out of the consciousness of the people taking form in custom or folk ways and is discovered through a process of wise analysis by our tribunals of justice.

Statutes, when they are wise, greatly facilitate the applica-

tion of the law. Organized society, expressing its will through statute, may dictate the liberties and the burdens of the people; may lay taxes upon them; may forbid them the freedom of action to which they have been accustomed; may lay down rules of conduct. But wherever such mandate, or wherever the statute as such, offends against that deep-lying sense of justice held by the people, and born of ages of folk contacts, a way will be found—has always been found—to set it aside as unconstitutional; as against public policy; or somehow organically unsound. Law is therefore supreme over the statutes. They are its handmaidens. They do not create it.

Statutes do not appear in the scheme of social organization until a relatively late stage of development. Society must be far enough advanced to recognize a will of the whole people, since statute is essentially an expression of that will. The object is political rather than juristic. Statutes, properly speaking, aim at the perfection of the machinery of government. They seek to remove political evils. They substitute nothing for the true, unwritten law, but rather seek to make it more effective.

At first sight it may seem difficult to reconcile such a compilation as the Code Napoleon or the Field Code and the many similar codifications with this statement. But as a matter of fact the only service rendered by an attempt at codification of the unwritten law is to identify with greater certainty the law as it existed down to the moment of codification. Admittedly a code can provide no rule for the future. It frequently attempts to do so: but the long record of special or restrictive interpretations; legal fictions; citations from common law decisions; and other indices of departure show eloquently that justice as revealed by man's sense of that which is fair, honorable and upright between men, is the gauge of right conduct, and not the mandate of a law-maker. Man by nature is a seeker after happiness and a shunner of pain. Watch him through the ages of his anabasis and it becomes apparent that his only means of knowing what will bring him happiness and avoid pain or unhappiness is his observation and recollection of the consequences of his conduct. Generation after generation he follows a process of trial and error in his relations with

his fellows; learning which way lies pain through disappointments, through retribution for his acts; discovering the course of pleasure, contentment, comfort. Out of his contacts with others comes his knowledge. From his sum total of experience in life he derives a sense of safe and right conduct. This gauge of sound conduct in social relations we call justice. It is man's aggregate sense of what is just that makes the law, even though it requires the wise men of the tribe to study it, to reason it, and finally to discern it and apply its principle to disputes as they arise. This is the common or unwritten law. It is the only true law. Statute or public law intermingles with it at many points, but is always subject to it, and will be overridden by it where the two conflict. Men will not for long suffer that which offends their innate sense of justice.

EMINENT THEORISTS—But the social worker who reads these pages should not pass them by with the notion that this view is not challenged. Many students of government still maintain that theory of legislation most usually attached to the name of Jeremy Bentham. Thomas Hobbes, writing a defense of the House of Stuart in the despotic measures taken by them to suppress rebellion against the civil authority, contended that as man in a state of nature is in a state of anarchy and progresses only in a state of organized society, he therefore does best under an absolute political authority. Hobbes preferred a monarchy, in which of course the monarch through his system of government should be supreme. It was not yet the day of government as a service to the people. Much less was it the day of government by the people. It was the era of divine right. This theory of divine right was so obvious to Hobbes that it was not even contended; it was assumed.

Bentham, coming after him, declared that law ought to be "a portion of discourse by which expression is given to an extensively applying and permanently enduring act or state of the will, of a person or persons in relation to others, in relation to whom he is, or they are, in a state of superiority." He added nothing essential to the dictum of his teacher who defined law as "the speech of him who by right commands something to be done or omitted." That is to say, law is the voice of the powerful. There is no abiding place for righteousness

in such a definition, unless indeed the voice of power is forever the voice of right. If the king rules by divine right: if the king therefore can do no wrong: it follows naturally that the voice of the king is the voice of God, and that might is right.

It is natural to think of law as rule and of rule as command. Except for this association of ideas, modern thought parts company with such definitions. Right and justice are not determined by tyrants, be they hereditary monarchs or elected majorities. That subtle sense of right and justice which grows without being made comes out of the consciousness of man—is born of centuries of experience. It is the essential product of civilization through the ages. From time immemorial it has been recognized as the ultimate guide in human conduct. Not realizing whence it came, the ancients conceived its origin as some mystical, all-powerful mind, and not knowing what better to call it they styled it God or Jove or Nature. They conceived the idea of an ultimate true and perfect law toward which all human laws made progress, however slow. This ultimate truth they styled the law of nature. Of it Blackstone in his commentaries says, "This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all their force and all their authority mediately or immediately from this original." [1] The great commentator was speaking of that basic sense of justice which is the index and telltale of the presence of unwritten law, the law of custom. What he visualized was a mystical code of truth and justice incapable of definition in his day and school of thought, but emerging now, in this modern age of anthropology, of ethnology, of evolution in species, as an obvious concomitant of civilization. The mystery falls away and we discover in the dense pitchblende of human experience that speck of radium which is man's sense of right, emanating principles and rules of conduct approved and revered among all peoples.

Nothing has served so pointedly as the speed of modern

[1] *Commentaries,* Bk. I, p. 41.

discovery and invention to show the completely unstable nature of human tenets. Out of long experience, through trial and error, man evolves principles of justice,—standards of what is considered right between man and man. But he is forever restating and reapplying them to the conditions of the moment as those conditions change in our ever-changing world. Aforetime he had to explain the origin of his deep-seated sense of justice by referring it to the gods; just as in the days when the world was flat and the stars were fixed in the canopy it was necessary to erect an elaborate mythology in order to escort the sun from east to west. The coming of knowledge is the departure of mystery, and this is no less true in our concept of the nature of law than in our vision of the physical universe.

The Legitimate Uses of Statute—If the social engineer, viewing the limited usefulness of legislation as a means for securing and guaranteeing justice in modern life, takes stock of the present widespread belief that the way to bring about reforms in social conduct is by statutory prohibitions, he must see that one vital necessity in any sound appraisal of the science of public welfare is a full appreciation of the nature of the law, since the law is our expression of justice, our guide in social relations, and our index of social growth. The safe rule for the social worker is to think of legislation as public ordinance, and of court decisions as the real law.

But however limited legislation may be as a feature of the law governing human conduct, it becomes daily more important as a channel of expression of the will of the community in the ordering of everyday public business. Its uses are many and valuable. It is the purpose here to name specifically the more important of these functions:

The organic enactment, setting forth the structure of government in a democracy, we style the Constitution, a document setting forth in succinct language the frame of the organized society; its departments and their functions; its officers and their duties; the metes and bounds of its authority, as in matters of taxation, of imports, of the conservation of natural resources, in dealings with other governments and peoples. The details of organization by which that organic framework

is made functional is usually left to enactments made by a legislature within the limits of the Constitution. It is under this function that departments of public welfare, of public health, of education, of corrections, care of the insane, and the like, are established. In most states a departmental scheme, frequently embodied in one enactment, defines the several departments of the government and outlines their respective powers.

It may express a grant by the state to an individual or group permitting them to do something touching the interests of all the people, such as, the construction and operation of a railroad,—a public utility; or a grant in the form of a charter to a group to carry on a philanthropic or public welfare service, such as a day nursery, a hospital, or a relief society. It is under this function that the community sanctions the efforts of private individuals who seek either for their own gain or the common good to carry on some enterprise of importance touching the interests of the whole people.

It may command some service to be rendered. Thus it may set up a state institution for the care of the dependent infirm; and may require the officers which it provides to perform certain duties. This function is similar to the first but deals more with the ramifications of method in getting public business done. Its essential difference is the command which it imposes upon individuals who serve the people.

It may, for the better preservation of the peace and the quieting of disputes over possessions, issue an order that evidences of possession shall be recorded in some regular way; as in the establishment of a registry of deeds where evidences of title shall be recorded. It may express the penalties which will be visited upon failure or delay in making such record. It does not punish the individual for failure to record his deed. It defines the consequences of his default in terms of loss of his title or the risk of a cloud thereon. In this instance the penalty must accord with justice as found in dealings over land. No new law is created. All that is set up is a clarifying process by which disputes are the more readily resolved.

It may declare some act against the public peace to be a crime and fix the penalty for the commission thereof. Thus

it may declare that "whoever is guilty of murder in the first degree shall suffer the punishment of death." It may go further and declare that murder in the first degree shall consist in homicide committed "with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable by death or imprisonment for life." In this enactment, society has only clarified details for the ready solution of issues. "Premeditation," "malice aforethought," "extreme atrocity" are old terms. Justice among men is still to be determined by customary law. The statute has clarified the course which society will take upon a finding of guilt. Our extensive body of modern statute law dealing with crimes and misdemeanors is of this public nature and serves a most useful purpose in expediting public business without offending justice. If such a statute as that relating to murder were to declare that any person who commits homicide while wearing a cap shall be punished by death, the long-drawn-out trials which now clog our criminal courts would be greatly expedited, and the public business much simplified, but such a declaration would not be tolerated by the people because it offends against our ingrained sense of justice. It would be contrary to law and therefore invalid as an aid to justice.

In this view of public law the question arises, how far can statutes go in advancing justice by clearing the way of details and making the attitude of the organized community clear? It is a question which involves consideration of that growing phenomenon in public business which we may call by the name of "administrative justice."

Needs of the Time Outstrip Our Law-finding Process—Litigation is so varied and constant and the process so laborious in American courts that years often intervene between the inception and the termination of such. Jarndice *vs.* Jarndice may have been a caricature of English Chancery: it is a fairly accurate description of American litigation. And this condition obtains notwithstanding an elaborate system of courts spreads to the four corners of the land and is constantly referring a multitude of causes to masters and referees for reduction to special issues upon which the courts themselves can

act expeditiously. With a positive accrual of twenty-five thousand statutes coming from our Congress and our forty-eight legislatures every year, we are adding an ever-increasing number of tasks to the business of our courts. Examples are: the enactment of measures for the protection of life in industrial occupations; protection of the public health and the safeguarding of the individual in his ability to work and support himself and his dependents by prohibiting the manufacture and sale of drugs and intoxicating beverages; guarding the public safety by regulating the operation of vehicles upon the highways on land and sea and in the air; the zoning of cities for the better protection of the health and comfort of the public. The speed of life is so greatly accelerated; the rapidity of new discovery and invention is so much greater than formerly, that society is hard put to it to adjust itself to such kaleidoscopic change in its environment. We must live in congested population-swarms.

Community Consciousness a Necessity To-day—In order that the individual may enjoy any rights at all, it is necessary that the whole population work out its welfare jointly. To put it in another way, the interests of society have by force of modern circumstances become paramount to the interests of the individual. The recognition of this necessity is overwhelming us with a multitude of regulations governing the relations of the individual to the rest of society. We cannot wait to determine equity and justice by a long process of trial and error under the new conditions. We must guess at it and depend upon our common law courts to determine whether the guess is just. This essentially is the process by which we set up workmen's compensation systems; the regulation of public utilities; highway rules; and zoning ordinances. And in order to keep abreast of the issues arising under them, we have fallen into the practice of setting up appeal boards and commissions, giving them semi-judicial powers to dispose of disputes and to interpret regulations. Even the extreme individualist now recognizes the necessity of most of these public measures. It is not long since forbidding a boy to go swimming in a municipal water supply was the privation of an ancient personal right. To-day the mere possibility of using such a supply for bathing

causes intense indignation. Only yesterday inspectors who went into dairymen's barns and milk depots were thought of as meddlers. To-day they are as highly sanctioned as the police. The idea of tinkering with a municipal milk supply or handling it carelessly causes consternation since the public knows the disastrous consequences that may follow.

After a long course of experimentation with corporations and trade pools, we established the national policy of regulation. We find it highly expedient to hasten the settlement of disputes arising under the regulatory measures, to which end we set up a Federal Trade Commission and invest it with that authority in regulation which hitherto had reposed in the national legislature and the courts.

Industrial Accident Boards—Another example of extra judicial machinery to expedite justice and protect the community is found in workmen's compensation acts. It is estimated that more than twenty-five thousand persons are killed in industrial accidents each year in the United States. Of course many more are seriously injured. This vast total of tragedy means thousands of destitute families left to be supported by public taxes or private benevolences. At common law, for such a death or injury the workman or his estate might sue for damages; but he must prove that the employer was negligent and that his negligence was the direct cause of the injury. Furthermore he must prove that the injured party was not himself negligent, after which he was liable to be nonsuited if the defendant could show either that the accident was a part of the "ordinary risk" of the business or that a fellow servant was negligent. Such precarious litigation might drag along for years and could be financed in actual practice only by a contingent fee which absorbed the major portion of any benefit recovered. Such a course was impracticable for the working man, and it afforded practically no protection for the community.

The answer has been our workmen's compensation laws which set up a commission or accident board with power to make rulings under its broad enabling act; to grant hearings upon the reasonableness of any of its orders; and to make rules and regulations looking to the health and safety of workers in

industrial establishments. It is frequently provided, as in the Ohio law, that decisions of such commissions are reviewable only in the supreme court of the jurisdiction, thus avoiding the circuitous course of litigation through the inferior courts. Thousands of cases are constantly in process in these commissions. Meantime our courts continue to safeguard the basic principles of justice while our administrative boards set up a rule of thumb and run their causes through subject to ultimate review by the courts. It is a remarkable instance of aiding the process of finding justice on the facts by a rough-and-ready rule of thumb in the form of public regulation.

Zoning Appeal Boards—A third example of departure from the common law court method is just coming into evidence throughout the United States in the form of planning and appeal boards empowered to hear appeals under the zoning ordinances now coming to be common in our municipalities. Seeing that we must live in close-up, dynamic association in our living quarters and in our daily activities, industrial and social, it becomes increasingly necessary for the preservation of the public health, and the advancement of contentment and welfare generally, to think of the population-swarm as a whole unit, with an individuality and consciousness of its own, having not only the right but the duty to set its municipal house in order and keep it so. The haphazard policy of allowing a city to grow as private interest accidentally develops it, must give way to a logical arrangement which will more nearly guarantee fair living quarters; decent working facilities; economical transportation; a better distribution of breathing spaces; and the like.

Out of this reasoning we are planning our cities, accepting the hotchpotch as it stands and seeking to put order into it for the purposes of future development. But as a zoning plan touches the private property of practically every land-owner in the community, the questions of interpretation, of permissible variation in setbacks, light areas, nature of business allowed, height above grade or above curbing, and a thousand other riddles come immediately to the front. Their resolution means profit or loss to the individual, according to the decision. Many of them would result in litigation in the courts. How can the

courts be relieved of this new burden? The way out is found to be the vesting of semi-judicial powers of review in boards of appeal, or bodies by similar names, to handle all such matters subject to appeal to the higher courts.

Regulation of Traffic—A final example of our modern shortcuts to justice by way of administrative bodies is to be found in the automobile problem. Our highways are crowded with heavy, high-speed motor vehicles, each driven by a licensed individual, who may be any person not stone blind and not actually under commitment to a prison or an asylum. So rapidly has congestion on the highways come about that custom itself seems almost at the point of eliminating intent as a necessary feature in the proof of wrongdoing. If a driver runs his car over the white line on a curve, or past the dead line at a crossing he is liable to arrest even though he may never have seen either line; may not have noticed the officer's warning hand or the automatic signal. He may have been a careful driver, seeking at all times to obey the law. His intent is nothing. If the public had to establish proof of a will to violate automobile regulations, there would be scant opportunity to regulate traffic effectively. The result of all this pressure is a tendency to set up traffic courts which are genuine tribunals of justice, and to extend to automobile departments of public highway commissions semi-judicial powers to regulate traffic and even to impose penalties for infraction. It is widely proposed that persons charged with minor violation of traffic rules be summoned by traffic officers before the police captain of the local precinct and required to pay a penalty there fixed without trial, subject to appeal to the courts. This is a commonsense way of disposing of $^{99}/_{100}$ of the traffic violation problem. Justice will not suffer in the long run so long as appeal to a court of law may be had.

Other examples of the high-speed rule-of-thumb justice of the present day might be cited. The foregoing are enough to show the operation of social necessity in ordering the social contacts between men on a commonsense basis, keeping the customary law supreme as the great guide and mentor of our half-blind statutory course. We live under a new order of society, made so by the coming of the automatic machine in

industry, by new knowledge of chemistry, by new discoveries in the physical laboratory—in general by the progress of scientific discovery and invention. We must needs shape our governmental course to suit the new conditions. In the high-speed life of to-day we cannot afford to wait for the slow processes of yesterday in the discovery of the customary law. We must set up a positive order of conduct for the citizen. But we shall be safe even in this if, in so doing, we shall be able to remember that custom, varied always by the new content of our environment and experience, and changing as that experience changes, is the true rule of justice: for in so remembering we shall frame our statutory rule of public procedure to allow for the discovery of its working principles through the safe process of analysis of what *is;* rather than to rush into the making of some supposed rule of equity *de novo.* It is essential in the science of public welfare not only to perceive and to appreciate the modern trend toward shortcuts in public business through administrative boards with semi-judicial powers but also to keep in mind that these aberrations do not represent a new order of justice—are not law in themselves—but that like all valid statutes they are ready rules for the expediting of public affairs, finding their effectiveness in the wisdom with which they accord with principles of law already recognized, and in the facility with which they relate themselves to our regular tribunals of justice wherever questions of law are likely to arise.

## FOR THE STIMULATION OF THOUGHT

1. If we keep on setting up administrative boards and commissions with judicial functions, what is likely to be the effect on individual rights? What should this great departure in American procedure mean to the new profession of social work?

2. Should the enactment of statutes be the first or the last resort of the social worker? In particular, should legislation follow experience or should statutes express theory in the expectation that experience will accord? If mothers' assistance legislation during the past decade had had behind it something more than the experience of poor relief doles and a few sporadic instances of family case work, would we have had a more rational outcome than an enacted dole on a declared profession of adequate relief? What are the legitimate aims of legislation?

3. To which branch of government do departments of public welfare belong? Why?

4. Is there any practicable way, other than the removal of judicial functions from the courts and lodging them in administrative boards, by which the serious clogging of both civil and criminal courts can be obviated? What changes, if any, would you make in our judicial system?

## FOR FURTHER READING

Breckinridge, Sophonisba P.: *Public Welfare Administration in the United States.*
Bryce, James: *Modern Democracies.*
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## CHAPTER X

# ORGANIZATION OF DEPARTMENTS OF PUBLIC WELFARE

Keeping in mind the organic structure of our government as explained in the last chapter, it is appropriate to turn at this point to the history and present status of boards of charity and correction and departments of public welfare in the several states. These types are set out in order to show the mechanism employed by government in the handling of such problems as poor relief, state institutional care, custody and treatment of individuals, regulation of private welfare effort, and the like.

The First Departments of Public Welfare—At the moment when the tremendous strain of the Civil War was overwhelming the country with inflated money and depreciated values; when those who had not been swallowed up in the maelstrom of the conflict found it hard to live at all, to say nothing of paying taxes: there was great need of some sort of governmental policy with reference to expenditures for public relief and for the conduct of public institutions.

Massachusetts in 1863 created a state board to supervise the activities of cities and towns in public relief to the extent of safeguarding the state treasury against improper and excessive claims for reimbursement. This first state board had powers of visitation over state institutions. In accordance with the usual practice in New England, it was an unpaid, non-partisan body, serving out of public spirit and an appreciation of the honor.

In Massachusetts as in all other states prior to the creation of a Board of Charity the functions of the government touching the relief of the poor, the care of the insane and other public welfare enterprises were carried out through administrative bodies in the person either of a prison warden or a board of trustees conducting an institution. Supervision was effected, if at all, through standing or special committees of

the legislature. The legislative records of Massachusetts are replete, in the decades prior to 1863, with petitions brought by towns for the allowance of reimbursement for poor relief claimed to have been given to the unsettled poor and disallowed by the state auditor. Much time of the legislature was spent over disputed bills; in demands for investigation of public institutions; and in listening to long reports of auditing committees submitting items ranging from a few cents to thousands of dollars. It was a typical example of government still unorganized for public welfare service.

By 1880 there were nine of these supervisory state boards. There are to-day but three[1] of the forty-eight states in the Union without a central board which administers the direct relief functions where such are assumed by the state government and which supervises in varying degrees the relief and other welfare services of counties and municipalities.

In addition to the state mechanism, the type has been copied largely by counties outside of New England and by municipalities everywhere.

Physical Control of the Person the Guiding Factor in Organization—The functional scope of our boards of charity and departments of public welfare has not been fixed out of a consciousness of the public welfare program. On the contrary it is an historical growth, fortuitous for the most part. Neither legislature nor public have glimpsed the broad community need—do not to-day. Their rule of thumb is that persons in distress, either sick, or lame or blind or insane must be cared for. As pressure and popular demand strengthen to the action point, institutions are established to care for these various classes. Then, after a multiplicity of such plants has come into existence, a central nervous system is developed to control it. Through the whole course of reasoning the physical care of the individual is the guiding factor.

In that first Massachusetts board the sole idea was to check local demands upon the state for physical assistance to persons not legally settled, and to help the legislature in its regulation of almshouses and other establishments for the care of dependent persons. From this narrow point of view it was not

[1] Mississippi, Nevada and Utah.

likely that the new board of charity would absorb any of the functions of education. The State Board of Education, already twenty years old, was thought of as a function wholly separated from public welfare. Charity was thought of not as constructive planning for the betterment of individual and community: it meant alms and friendly relief to persons in distress.

In like manner, the functions of a state department of public health were not grouped with charity. But in the earlier day the constructive educational service of such boards was undeveloped. They dealt with quarantine, with the pursuit and capture of contagious cases, the examination of incoming ships and the reduction of public nuisances. So completely was this a process of dealing with the individual, and so closely was it bound up with the work of institutions in dealing with incapacitated persons, that the Massachusetts Legislature at a later date combined health and charity, grouping with them also the care of the insane, setting up a board of health, lunacy and charity.

Because of the political strength of the local correction officials, that state has never grouped her prisons with charity. But in most states these two obvious fields of physical control and regulation of the individual are placed together. The usual name for the earlier boards was "Charities and Correction." For nearly fifty years the National Conference, which was established by state board officials and was a reflection of their functions and activities, was known as the National Conference of Charities and Correction.

This basic factor of physical contact in care, custody or treatment of the person as a gauge in the organization of public boards in the public welfare field, is dwelt upon because it explains much of the otherwise incoherent jumble of events in the growth of public organization. Governments dealt with taxes; with highways; with the protection of the public health; with public education. These for the most part were detached, impersonal regulations of the rights and duties of free, self-propelling individuals. And then, in addition, governments had to deal with offenders and with the dependent. Where they touched the person to control him, to take custody of his

body, to feed, clothe and house him, they thought of punishments or of charity. They lumped the two together.

In these latter days the idea of mere remedies in the field of charitable and welfare service is giving way to constructive planning for prevention and improvement. Public mechanism is changing accordingly, but in considering the history of the movement, the personal contact label as a ready definition of charity and correction must be kept steadily in mind. It will be serviceable here to consider development in governmental procedure throughout the United States, by which the type of boards together with their functioning has been radically changed, and to appraise the relative values of the two resulting types,—the original supervisory body and the later centralized control mechanism.

The Movement Toward Centralization—The movement toward the centralization of public boards arises out of a variety of causes. Chief among them perhaps is the increasing need of speed and efficiency in the dispatch of public business, due to the mounting number of duties and the constantly growing grist of work. A single-headed body, with a simple and direct system of control, is in theory at least a much more wieldy instrument than a ponderous board of unpaid citizens whose primary interests lie elsewhere, yet who must be consulted by an executive before he may act in matters of planning and policy. The craving for speed and efficiency then has been a major cause.

A second development lending itself directly to centralization has been the constant absorption of relief functions by the larger units of government, under which the public board policy has been perfected. The increase of numbers and classes of individuals, such as the insane, the feeble-minded, the blind, the tuberculous, the chronic sick, places upon the government an ever-increasing burden of administration. Attention becomes focused constantly upon the actual process of housing and caring for individuals rather than the general supervision of such operations carried on by local administrative boards and lesser units of government. Feverish expansion in the size of the task is perhaps then the second inducing cause.

A third cause is the ever present, constantly pressing urge

of politics. The highly centralized body, appointed by the political leader, and paid from a budget in his control, is a more felicitous instrument for the advancement of the political interests of boss or party than are non-partisan or bi-partisan bodies of unpaid citizens, composed frequently of individuals who serve out of a sense of duty and are unwilling to stoop to political back scratching. It is a common and constantly repeated legislative experience therefore to be entertaining proposals of the politician for centralized control of executive functions, all in the name of efficiency.

A fourth cause lending itself freely to the three already named is the American slant toward technical efficiency in business methods. It is in the United States that the great advance in factory efficiency has been made. Improved machinery, careful planning of floor space and of time schedules, rotation in duties—a multitude of factors—have resulted in the do-or-die speed with which the disk is shot into the mouth of an automatic machine, tended by a standardized set of human motions, shaped, stamped, printed, lacquered, collected, packed, tagged and jettisoned ready for the consumer. A life so filled with speed and volume tends to forget mere quality and trains the eye ever upon quantitative values. To do things in the cheapest and quickest way; to rate success in terms of income; to think of civic advancement in terms of increase in population, in greatest length of paved streets, in tallest buildings, or the largest this or the richest that—these habits must have their reflex in the field of governmental organization in a demand for the simplest, most direct and speediest system of getting things done. Never mind the quality of the product; cover the ground and step lively. It is not surprising then that politicians may, for reasons best known to themselves, demand simple, centralized administrative boards; and conscientious citizens, in the name of more efficient service, may back the proposals.

For the foregoing reasons principally, and for others perhaps, one state after another has yielded to the pressure for centralized administration until only a remnant is left of the supervisory schemes contemplated in the first state boards. It is the purpose here to explain in more detail the important features of these two types of organization in state govern-

ments—the supervisory and the administrative: to discuss briefly thereafter the types usually found among our counties and municipalities: and finally to outline the probable trend of the future in public board development.

The Typical Supervisory Board—The essential features of the supervisory board system are:

1. A board or committee of citizens appointed by the governor, for rotating and overlapping terms. Such boards are almost always unpaid and serve out of public spirit. They are usually non-partisan, but are sometimes required, as in Indiana, to be bi-partisan. This body represents the people, in theory at least.
2. An executive officer appointed by the board, serving at its pleasure and subject to it in all matters, in particular all questions of plan and policy.
3. A limitation of function to supervision alone. Such a typical board would not administer a state institution. Such administration would be effected through a single officer or through a board of trustees. The state board would visit, inspect, study and advise. It would not interfere in the administration. Nor would such a board undertake the care or custody of individuals directly as does the Massachusetts Board with its five thousand state minor wards.
4. A philosophy of functioning such that the aim of the entire operation is to carry out, within the enabling provisions of the statute, a consistent and adequate program of public welfare service, by study of the various statutory functions already existing in the form of institutions and processes of care; by oversight and advisory leadership of such instrumentalities, and by shaping the thought of the people in sound courses yet uncharted in the broad program.
5. A plan of organization by divisions, or departments flexible enough and elaborate enough to classify functions for efficient handling by able workmen.

Such boards in actual practice supervise all the state and the local institutions for the care, custody or treatment of individuals. They look after the interests of the state government in matters of reimbursement where the state is a party to joint expenditure, as in mothers' aid in Massachusetts. They

exercise the power of license over enterprises within the field of public welfare as in the case of boarding homes in Indiana or lying-in hospitals in Massachusetts and North Carolina. But essentially their task is to form the central thinking mechanism for that public system, seeking to shape and to guide the program of public welfare work as a growing service, consonant with recognized social need.

The Typical Board of Control—The essential features of the centralized system of control of public welfare enterprises in so far as they differ from the supervisory plan are:

1. A single officer or board appointed by the governor serving usually for a definite term.

2. A single-headed bureau or department having only administrative powers, or if supervisory functions are named, affording no genuine way of making such functions effective. In some states, as formerly in Illinois, a supervisory board is maintained parallel to and coördinate with the centralized system of control. This additional body, as it possesses no real power and has no veto over planning and policy, serves as little more than a dignified gesture of respectability and endorsement for the control body. With the centralized control board, which administers the state institutions and carries out all the state duties touching relief and aid of poor persons, there can be no such thing as real supervision, for the reason that a public board cannot administer and supervise the same operation. It can supervise the work of smaller units of government and the activities of private organizations.

The rapid movement toward central boards of control has been greatly accelerated, as might be expected from the reasons already explained, by the development of control systems of budgeting for governmental expenditures. By this means the leisurely and wasteful processes of disjointed, unpaid board systems have begun to stand out in sharp relief. Seeing the inefficiency, budget planners have sought to reduce all state expenditures to a uniform standard, ticketing and classifying everything so that its amount can be quickly ascertained. By such systematization every state institution should use the same kind of flour or the same grade of prunes or the same soap. Given the daily average population and the freight rate the

quantity and cost of any commodity used could be definitely determined.[2]

This desire to pigeon-hole and label every item of public welfare service has resulted in central board development at a rate too fast for the supporting experience. As might be expected, these perfect paper systems seldom fit the needs of the communities they serve: and in many instances lend themselves to personal abuse by bosses and political parties. One of the most logical schemes of this sort, and at the same time one of the most disastrous in respect of its susceptibility to political control, is that adopted in 1917 by the great State of Illinois.

But however untoward some of the state board growth may seem, there is a steady development toward the effective instrument for carrying out those public welfare services made obvious by the times. Public welfare work is intimately the concern of its sole beneficiary, the public. It cannot for long be made the property of religious clan or political group. It must be placed on the broad plane of comprehensive civic service and kept there. Hence the governmental machinery for executing such functions must be so constructed that it is constantly responsive to public opinion. The best instrument yet devised for this use is the unpaid board, functioning at least in an advisory capacity.

As population presses upon itself, the duties of public welfare boards multiply apace. Business must be expedited, and it must be handled rapidly and economically. Unpaid boards cannot administer functions economically and with dispatch. They lack technical skill and suffer too frequently from divided interest and attention. The work demands a trained executive in charge of all administrative functions.

Charity, Like Crime, Is Local—Again the process of carrying on a public welfare system cannot stop with the interests of the state government: it must deal with the interests

[2] See the proposal of the Commission on Economy and Efficiency for Massachusetts made a few years ago, that all institution buildings, whether it be freight shed, cow barn, hospital ward, correctional cottage, morgue, should be built on a unit basis, of concrete, poured from a single standard set of metal molds, owned by the state and shipped like a steam dredge from place to place as needed. Mass. House Document 2137 (1914).

of all the people not only as a social state but also as a galaxy of minor community units, such as counties, cities and towns. And at bottom it must center its philosophy around the fact that it is dealing with individuals. It is relieving the sick, aiding or housing the poor, guarding the defective or the lawbreaker. As a community-wide system, reaching the remotest village and crossroad, it must reckon with a principle that deserves special mention, namely, that public welfare service—charity as we used to call it—like crime, is local. It has to do with hearth and home. It views the way a father and a mother breed and nurture their children. It peers into the worker's dinner pail. It scans daughter's conduct at the Saturday night dance. It watches mother's housekeeping practices—her effort to keep the children in school. It seeks out the children who are neglected or abandoned or hungry. It is intensely local in its final application.

Since its factual basis is local, the service itself must in the last analysis be administered locally. This is a far-reaching fact in determining the sound character of the system. Beyond a certain point, absorption of public welfare functions by the largest unit of government becomes harmful to the public interest. There grows up in such a system therefore a mechanism of local boards or agencies charged with the actual physical contact between the community and the individual. In states outside New England (where the county is little more than a judicial unit and where town government so largely takes its place) this means county public welfare units, and under them municipal or village units.

Centralized Planning. Decentralized Administration—By this reasoning we reach the basic principle of state board development, indicating the true line of procedure in the future, namely, that planning, program building and policy making in their broader aspects should be centralized in the largest unit of government; but that administration of functions in public welfare service should be decentralized as far as practicable in the smaller units of government. The consequences of this principle lead us not to a multiplicity of unpaid boards on the one hand nor to a centralized board of control with undeveloped supervisory powers on the other. It leads

us to a middle course, constructing that arm of the executive branch of the government in such fashion that it can shape and lead without removing from individuals and groups that sense of responsibility which is alike essential to individual prowess and to community progress. As an illustration of a state system attuned to local needs and representing as well perhaps as any such system in America those elements which are bound to be developed and extended in the public welfare organization of the future, the North Carolina system is explained somewhat at length.

The North Carolina System—This plan in its present form was set up in 1917.[3] It involves the following salient features:

(1) An unpaid board of seven members serving for terms of six years each, rotating in groups of two; nominated by the governor; appointed by the Legislature.

(2) A commissioner of public welfare who is the executive officer of the system. He is appointed by the board and serves at their pleasure.

The functions of the board, as enumerated, reveal the duty of leadership in public welfare service. Thus with the single exception of provision for the assumption of care and custody of dependent children and their placement in family homes, the services to be rendered by the department are of a supervisory nature and are of the broadest scope, allowing discretion to a high degree. Eleven specific duties are outlined, namely:

(1) To investigate and supervise "the whole system of the charitable and penal institutions of the state," and of the smaller units of government.

(2) To study the causes and symptoms of public ill-being, such as, non-employment, poverty, vagrancy, housing conditions, crime, public amusement, care and treatment of prisoners, divorce and wife desertion, venereal diseases. In this research work the board is to think of causes, treatment and prevention.

(3) To study and promote the welfare of dependent and delinquent children and to provide for their placement and supervision.

[3] Consolidated Statutes, North Carolina (1919), Ch. 88.

(4) To inspect and report upon private child care institutions, such as orphanages, maternity homes, and persons or agencies receiving and placing children.

(5) To license persons or agencies to carry on "such work as it believes is needed for the public good."

(6) To issue bulletins and otherwise make known to the public the facts about social conditions.

(7) To compel witnesses and give publicity to its investigations.

(8) To employ "a trained investigator of social service problems" to be known as "Commissioner of Public Welfare."

(9) To recommend legislation.

(10) To encourage counties to establish county superintendents of public welfare.

(11) To attend social service conventions.

A board of this description, if it functions at all, must, in the nature of things, be a program builder in public welfare service. It stands upon a high hill from which may be seen the whole social domain and all the elements which make up a consistent plan of public service. It is not required to administer the prisons, the asylums for the insane or the state schools. If it were so required it would be busy at once with problems of budgeting, of building, of boiler pressures, sewage disposal, purchase of supplies, fire hazard, and a thousand and one administrative details. Experience shows that where the concrete problems of plant maintenance are ranged alongside of the intangible problems of social program engineering, the latter suffer. The mind turns to the relatively simple, three dimensional idea, postponing the tougher line of reasoning. Boards with heavy administrative duties seldom lead anywhere in the development of community programs.

County Organization—The North Carolina plan proceeds from the organization of the state board to the development of county mechanism. This, as might be expected, is an administrative instrument. It faces the local fact of personal contact with the insane person, the neglected or delinquent child, the paroled convict, the vagrant and the poor. The relationship between state and county machinery is made definite by the provision that the state board shall appoint three persons for overlapping three-year terms, who shall constitute a county

board of public welfare. Their secretary is the county superintendent of public welfare, appointed by the county commissioners and the county board of education acting jointly. He must, however, have a certificate of qualification from the state board before he is eligible to office. An interesting provision is that by which the county superintendent of instruction may act also as superintendent of public welfare.

The duties of this officer, acting under his county board, are eleven in number, viz.:

(1) Direction of school attendance work.
(2) Care and supervision of the poor and administration of the poor funds.
(3) Follow-up of persons discharged from asylums and other state institutions.
(4) Oversight of all paroled prisoners in the county.
(5) Oversight of dependent and delinquent children, especially paroles and probationers.
(6) Oversight of all prisoners paroled from the county institutions.
(7) Promotion of wholesome recreation in the county and the enforcement of the laws relating to commercialized entertainments.
(8) Oversight of all dependent children placed in the county.
(9) Assistance of the state board in finding employment for the unemployed.
(10) Investigation of the causes of distress (under state board direction) and the making of such other investigations in the interests of social welfare as the state board may direct.
(11) Investigation of mothers' relief cases and general oversight of the application of Article 4 of Chapter 90, Consolidated Laws, for aid of needy orphans in homes of worthy mothers.

To the choice of North Carolina as an illustration of sound public welfare organization it may be objected that this is a state still rural in character, happily thus far free from overbearing metropolitan areas. Obviously this is the fact. Nevertheless a careful analysis of the content of social service work, urban and rural, will show that the care of the insane, the harboring and upbringing of children, the relieving of the poor, are the same in character wherever found. They differ

in quantity with the density of population and the industrial status of the district in question, but their symptoms and their methods of treatment differ little if at all. New Jersey has only recently extended its system to experiment further along this line.

A great metropolis in the state exerts a preponderating influence in the state government. Like Chicago in the government of Illinois; Philadelphia in Pennsylvania, or New York City in the government at Albany, it becomes a question whether the state is any longer the sovereign jurisdiction. Yet the relationship between the whole people and a municipality within their boundaries remains governmentally the same. For all practical purposes the one-city state or the state of many urban communities presents two features of moment in public welfare board construction. One is the vast increase in quantity of the services rendered. The small but populous State of Massachusetts, one-sixth the size of North Carolina in territory, yet half as large again in population, is housing and supporting some forty-five thousand insane, feeble-minded, law-breakers and other dependents. But increase in the volume of the service in no way affects the form of organization provided the plan is flexible enough to provide the requisite number and classification of workers. The more populous and complicated the state the more complete the departmentalization. The basic form need not change. The other consideration is that of political corruption. The dawn of the millennium in the purity of municipal government in the United States is not yet. In fact the ways by which our city governments can be made honorable and efficient are not yet in evidence. It is probable that under a government of the people—a people as ambitious individually as are the citizens of the United States—we may expect a steady incidence of corruption. This being so, it becomes necessary to preserve a somewhat elaborate system of checks and balances, suffering the resulting inefficiencies in order to keep the wrongminded from using the processes of government for their own ends. In public welfare board building this means the preservation of the unpaid board with its veto on planning and policy. It means the continuance of a buffer between the chief executive of the government and the

executive of the welfare department, making the appointment of that officer a matter of board control exclusively.

MUNICIPAL ORGANIZATION—An examination of city methods shows forms varying from simple administrative control boards to an approximation of the elaborate state system, as though the city, like ancient Rome, were a city state. The need of the American city is for an administrative board as flexible and efficient as practicable, but safeguarded as far as possible from corrupt city politics. Few schemes could lend themselves so readily to the desire of a boss or a ring to distribute the people's taxes for their own benefit as a city system of outdoor relief of the poor. A single-headed department officered by the mayor's appointment is capable of such a connecting up by inside wiring as will distribute relief in coal, groceries, rent or cash to any person the mayor or his backers desire helped.

The safeguard against this danger lies again in a non-partisan board chosen at large by the mayor for overlapping terms, or by the governor in like manner if city conditions are unusually corrupt, leaving to this board the duty of choosing their executive and standing responsible for his efficiency.

In the municipal field as well as in the larger unit, the position of executive head must be sufficiently definite to attract superior skill. A department laden with a long miscellany of duties is frequently under the necessity of dividing up its various functions among mediocre workmen, because specialists are not attracted to a position which offers no elements of leadership. The care of the insane, because of the great advance of recent years in psychology and psychiatry, is a topic of far-reaching importance. It calls for leadership in the modern state. If this service be not set out where at least a division head may have a set of functions unmixed with tasks foreign to his field, the result will be that a time server or warden will eventually step in to carry on a routine devoid of constructive thought.

In most cities public health is recognized as an outstanding specialty and therefore placed under a complete department. The same is true of public education. Only in the conduct of jails and other places of detention, the running of almshouse or poor farm, the care of abandoned and dependent children

and the relief of the poor is there a permanent fog in the mind of the social engineer. These fields are usually thought of as a residue capable of being lumped together. Institutions as concrete objects are for the most part administered by boards of trustees, subject only to the mayor. Boston sets up an Institutions Division, in which the city prison, the almshouse and the process of child care are a triple and coördinate substructure. The outdoor relief of the poor, with the added feature of mothers' aid, is administered by the Overseers of the Public Welfare. This latter board is an unpaid body, dating historically from the first days of the New England settlement.

More than forty of the larger American cities have departments of public welfare with a slowly moving tendency toward a standard form of organization, a single commissioner with large administrative powers but working at one or more points with citizen boards.

Public Subsidies an Unmixed Evil—One feature of present-day organization for public welfare service remains to be noted. This is the practice of public subsidies to private enterprises in the welfare field, usually hospitals or child caring institutions.

It is a sound principle of governmental finance that public money should not go where public control and responsibility do not follow. In the genesis of American state government public problems usually get themselves attended to on some makeshift basis until by their magnitude and power of focusing attention they call for careful planning. In this manner governments have sublet the keeping of prisons and the working of prison labor, and have long been in the practice of subsidizing charitable institutions on the theory that these agencies were relieving the burdens of government. In states like Pennsylvania, Maryland and Maine the practice has resulted in a graceless scramble among the private societies for legislative action in their favor. The grants have been less the reimbursement for cases handled than the making up of deficits. Consequently the larger the deficit shown, the larger the grant. A premium is placed upon inefficiency and a duplication of effort.

With growing public consciousness of the importance of so-

cial welfare enterprises, the tendency is slowly making head to bring all private welfare enterprises under public supervision. This practice will in time bring about such a watchfulness of these private bodies as may guarantee a deeper sense of responsibility. The new Pennsylvania Department of Public Welfare has made commendable progress in this direction.

But in any case, such plans for oversight can be only by way of meeting an evil—an evil born of the form of organization itself. Either the public should feel sufficient responsibility in any given social problem to set up an organization to meet it or the government should stand aside and permit the volunteer to cope with it. Public subsidies make mendicants of private charities. Seldom does the government get its work done at a less figure by doling it out in this manner; and as most private agencies, especially those engaged in child care, which is the field most affected, are still under denominational auspices, the system of fostering them with public funds lends itself directly to an abuse of church interest in affairs of state. Even the effort to be strictly fair and impartial among the numerous denominations tends to increase rather than decrease the public bounty. Always when monies are so paid into an operation, the income and the outgo of which are equally beyond the knowledge and control of the government making the payments, the tendency is to get all that can be had and to throw the balance sheet to suit the making of an appealing case.[4]

In the chapters which follow, the special fields of public welfare service, such as the relief of the poor, care of the insane, treatment of law-breakers, public health, and the like, are taken up. In each the principles of organization set out in this and the preceding chapter are of importance and should be kept in mind.

## FOR THE STIMULATION OF THOUGHT

1. What is the historical reason why departments of public welfare were first known as boards of charity and correction? Why did they combine these two subjects? Why did they not include public health as well? Why have they changed to departments of public welfare?

[4] See Chapter VIII.

2. Do you agree with the statement in this chapter of the basic principle of state board development? Can there be any doubt that the state government is always more efficient; pays better wages; can command better service, than a small town or a county? Why should not the state therefore administer public welfare service instead of stopping at mere supervision?

3. What are the reasons for and against the subsidizing of private charities out of the public treasury? What are the tendencies of a subsidy system? Compare child care in Pennsylvania with child care in Massachusetts.

4. Contrast the newer New Jersey county organization plan with that of North Carolina.

5. Make a study of the personnel turnover in state departments of public welfare.

6. Why have academic students of government, especially of municipal, omitted the problem of public welfare from their texts?

7. What are the major difficulties in the way of public welfare progress to-day?

8. Illustrate with cases the importance of local treatment of certain types of maladjustment.

## FOR FURTHER READING

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## CHAPTER XI

# POOR RELIEF: GENERAL CONSIDERATIONS

Public dependency includes all persons dependent upon the public for support, whether by reason of physical incapacity, through sickness, old age or other infirmity; mental incapacity through insanity, feeble-mindedness or other defect; infancy otherwise unprotected and uncared for; and all persons convicted of crime and sentenced to public custody. Obviously also, it includes all dependents of persons so classified where no other means of support are available. Later chapters of this book take up separately the problems of child care, of the insane, the feeble-minded and persons sentenced for crime. In this chapter and the two that follow it consideration will be given primarily only to the process and practice of public aid or service at public expense to persons who are in want or distress or who, for any other reason, are the objects of such duty. In the main the topic deals with almshouses and their inmates and with the recipients of outdoor public aid. It treats incidentally the special classes already mentioned but only because in many parts of the country these specials are given unclassified care in almshouses.

America the Land of Opportunity—Of all the countries of the earth, America should be the land of competence, since she more than any other territory is the land of plenty; of wealth capable of satisfying hunger and the need for warmth and shelter; of the means of support available and ready to the hand of him who has the will and the courage to perform ordinary tasks. In the age-old populations of Asia and of Europe, overcrowding, exhaustion of the soil, an over-plus of empty stomachs and an under supply of food and shelter mark the approach to that evil day when nature steps in and sets at naught man's ethical structure of society, deciding which stomach shall be filled by the rule of the strong—the law of the jungle.

In America, land of vast open spaces, some of them still unpreëmpted and all of them capable of supporting more persons to the acre than are now dependent upon them, it is hard to justify poverty and misery and famine on a basis of scarcity of supply, of overpopulation and the numerous causes ascribed in Old World population-swarms.

Yet we have in this New World poverty and dependency and all the symptoms of social decline and disease observable in our Old World cultures. Why is this so? Is it because poverty and pauperism are the sure attendants of social organization? Certain it is that misery has attended man from the earliest dawn of history; and there is no reason to suppose that his methods of life have changed through countless thousands of years. Who then are the poor and what are the causes of their dependency?

Men Are Not Free and Equal—It is a noble sentiment which makes all men free and equal in the eye of the law. That, however, is the only place in human experience where they are at such parity. Men are not free and they are not equal. Heredity brings down to the fraternity of each generation a varying content of competence and capacity, both physical and mental. The child with an I. Q. of 135 will go forth into the world clear eyed, probably ambitious, and make a career. His contemporary across the alley with an I. Q. of 72, born into an identical environment, will trudge through life doing odd jobs, if working at all; simple-hearted and simple-minded, it may be; the butt of designing wrongdoers and exploiters of the wretched. These fellows are not equal, and no amount of environment, either of riches or of opportunity, can make them so.

Again the children of apparent equality in intelligence, and of similar physical equipment, may face life's circumstances so different as to render one of them a handicap throughout his career. Here is a chap with a good home; a sterling mother who knows how and what to feed her children; a father who furnishes ample support and provides opportunities for education. His little friend in the next street is born into a poor home. His father carries a dinner bucket, and gets work only when the factory is busy. His mother is an ill-trained, dull-

witted slattern who prefers to fry the potatoes and buys soft white bread and feeds it to the children. Seeing that these little fellows in their helplessness are not masters of their own destiny, it must be admitted that they are unequal because their circumstances are so unequal. The problems of dependency cannot be thought through without much cogitation of these facts about declared social equality on the one hand and demonstrated natural inequality on the other. Man is never a free-willing individual. The best he can do is to avoid an overbearing, outspoken tyranny from other men.

We need not be surprised then, if in this new land of the free, we find poverty and pauperism of as somber a hue as any the most dour and degrading in the old world. But in a country populated largely by immigrants, we should look for some causes of dependency connected with this great human migration. What was there, if anything, in the migration of the past century, or in the practices of the Old World regarding it, that tended to augment the volume of pauperism in America? Before proceeding to the question of public dependency as it appears in the several states it will be serviceable to indicate one or two of these causes.

Some Major Causes of Public Dependency in the United States—A prolific source of pauperism, by no means yet exhausted in its evil effects, along the Atlantic seaboard, was the practice of England, carried on for three-quarters of a century, of emigrating pauper families to America. In the English Poor Law of 1834[1] is a provision that the rate-payers of any parish may appropriate or borrow up to half the average yearly rate for the three preceding years "for defraying the expenses of emigrating of poor persons having settlements in such parish, and willing to emigrate." The Poor-Law Commission, set up by that statute, reported that in 1834-5, the first year of operation of the law, three hundred and twenty persons were sent to Canada at an expense of £2,473. In 1835-6, the second year of operation, 5,141 persons were sent at an expense of £28,414.0.7. In the third year there was a revival in industry and a shortage of labor with a consequent falling off in the numbers sent away. This fact indicated that many of

[1] 5 William IV, Ch. 76, ¶ 62.

these emigrated poor were capable at least of rough labor. Nevertheless the purpose of this mild-mannered paragraph in the Poor Law was to rid England of her hereditary paupers, just as the colony at Port Jackson was established to rid her of her hordes of professional criminals.

The practice was not to select the able-bodied laborer who supported himself and family except at times of unemployment, but rather to pick the simple-minded man who had a stupid wife and a large brood of dull-minded children—a typical case of hereditary defect—and send them to America. According to the rules of the Commission all emigrants must go to British colonial ports but there was no requirement as to where they should dwell. Just where they did go is eloquently shown by the reports of almshouse boards in Boston and in New York and by the reports of special legislative committees in Massachusetts in the years 1835 to 1860. In 1828 the total number of foreigners admitted to the House of Industry at Boston was 262. This number remained about constant during the three succeeding years. In 1834 the total had risen to 631; in 1835 it was 516. Yet in this interval the whole number of inmates in that institution did not increase. In the poor house at New York in 1826 the total number of foreign paupers had been 1,159. In 1834 it had risen to 1,754. Again, the total number of inmates as in the case of Boston was not materially increased.

In 1836 a special committee of the Massachusetts Legislature on foreign paupers reported that in a study of nineteen English parishes in eleven different counties of England they found that 631 paupers had been emigrated in 1835. This committee noted the fact that there were at that time 15,635 parishes empowered by the English Poor Law to emigrate their poor. "These paupers," they said, "have no claim on upper Canada. Indeed nearly all of the host of foreign paupers who come to us arrive overland from the British Provinces of Canada." [2]

Another committee in 1846 concluded its report with this significant paragraph:

[2] Mass. 1836, House Doc. No. 66.

"Impressed by the conviction that the operation of the present laws causes an influx of foreign paupers into the Commonwealth, and assured of the fact that placards have been posted in different places in Europe urging the poor to emigrate to this country and, assigning as a reason for so doing, that the State of Massachusetts makes provision for their support, your committee have felt it their duty to report the accompanying bill which will, if sustained, prevent Massachusetts from standing longer alone in offering a bounty on vagrancy and indolence." [3]

It is probably the truth that the infiltration of hereditary pauper strains into the settlements along the Atlantic seaboard in colonial times and in the century following the Revolution, has had and will continue to have a marked influence on both the numbers and the complexion of our almshouse and out-relief dependents. In Massachusetts are numerous foci of hereditary defect, not a few of which can trace their ancient habitat to the poor-law unions of England.

Low Capacity Emigrants—A second predominating factor in the complexion of the dependent poor in all our industrial centers at least is the large number of low capacity immigrants, chiefly from southern Europe, who have brought their families to America and are now breeding a majority of the new generation of "American" children in our urban centers. In spite of strict contract labor laws, the less desirable of the population of the Mediterranean area have come to this country at the behest of capitalistic interests to carry on the rough labor of developing our natural resources. Along with the virile red blood which this world-moving emigration brought to us it gave us a goodly supply of brindle stock, not calculated to breed a solid strain, likely for many generations to supply us with a thriftless, dull or psychopathic brood who must be supported,—they and their dependents,—by our abler citizens.

Out of industry itself comes a yearly grist of breakage which throws upon the human slag pile many thousands of wrecks each year. These men and women will be handicapped or totally incapacitated for further labor. Failing other members

[3] See Mass. 1846, Senate Doc. No. 74.

of their families who can support them, they must be cared for by the public.

A vast number of the dependent poor is of course made up of persons without means and too old to earn. There is practically no provision in this country for the support of the aged poor save private benevolences and public poor relief. Approximately 80 per cent. of all the inmates of almshouses in the United States are fifty years of age or over. Special surveys of the condition of the aged in several cities indicate that about three-fourths of all persons sixty-five years of age or over are dependent upon some one else for support.[4]

The degree to which illegitimacy swells the ranks of the dependent poor is undetermined. But the effect must be considerable. For the United States registration area twenty-three in every thousand [5] live births are illegitimate. These children may and sometimes do receive adequate care. But the chances are against it. It usually remains for private social agencies or the public, chiefly the public, to befriend them and bring them up to competence. The State Department of Public Welfare in Massachusetts has some five thousand children in custody, about one-fourth of whom are known to be illegitimate.

The single greatest factor in dependency is of course the physical inability to work. Disease is the constant dread of the earner who lives from day to day on his wages, knowing that if pay stops he must seek charity or let his children starve. Many estimates have been made, seeking to show on some statistical basis the volume of economic loss in the country due to sickness. These are something of a pastime, yet they do serve to show what a huge amount of time is lost because of ill health. If one were to look into the thoughts of the strong man out of work, or the sick man who sees his family go hungry in order to feed him in his sickness, the social consequences of sickness would begin to appear. Medical Social Service has become familiar with an entirely new etiology of disease—the social as contrasted with the medical. It is in these social consequences that are to be found discouragement,

[4] See Research Study No. 3, Boston Council of Social Agencies, etc., *Aged Clients of Boston Social Agencies.*

[5] See U. S. Children's Bureau. Publication No. 166 (1926).

loss of ambition, a tendency to give up the fight, a bowing to the inevitable in seeking alms, and finally an acquiescence in the condition of public dependency. Hope being gone, pride departs with it.

Subnormal Mentality—But granting physical incapacity due to ill health to be the greatest factor in the volume of public dependency, a much deeper underlying cause is that of mental incapacity. It was hinted at in the reference to pauper emigrations. From the startling disclosures of the mental examinations made upon the draft levies in the late war, we learn that strong mentality is neither a fixed nor a stable quantity. An astounding number of individuals are comparatively dull-minded. Between fifteen and twenty out of every thousand inhabitants are markedly subnormal mentally. Of the 78,090 inmates of almshouses in the United States January 1, 1923, the mentally abnormal or defective totaled 36,710, among whom were 12,183 feeble-minded persons. This is more than one-sixth of the entire inmate population, and is to be viewed in the light of a growing volume of special institutional care for the subnormal, now totaling many thousands. Mental dullness, with its resulting inability to grasp opportunity, to foresee consequences, or to plan ahead, is at the bottom of much that we are in the habit of ascribing to the usual statistical causes of poverty, such as sickness, drink, accident. It is a fact well known to social workers that the dull-witted are the backbone of the drinking fraternity. Many persons of keen intellect drink to excess, but by and large the man who wrecks his life on drink is decidedly likely to be the dull-minded plodder who does not visualize consequences. Such studies as have been made of professional prostitutes tend to show that the overwhelming majority of them are feeble-minded. These persons, early discarded from their evil profession by the inroads of venereal disease, come soon to public dependency.

It is seldom that statistical findings in this field of public dependency take account of dullness of understanding as a cause of inability to get along in life. For instance, a Pennsylvania survey[6] reports causes of dependency as follows: widows, or wives of inmates of institutions for mentally ill, 55 per cent.;

[6] Penn. State Dept. Public Welfare. Bulletin No. 21 (1925).

industrial causes, such as sickness, accident and unemployment, 25 per cent.; desertion, imprisonment and the like, 10 per cent.; and old age, 10 per cent. This large number due to a failure of the breadwinner caused by mental insufficiency is an excellent illustration of findings in most studies. The great underlying cause is obviously the lack of judgment necessary to make a go of life.

Finally, no student of public poor relief can survey the causes of pauperism without admitting that a great and constant cause of dependency is that very process of poor relief which is aimed at its reduction. The weakening effect of public support of the destitute encourages the easily discouraged to depend upon the public, forgetting their pride. An examination of the experience of England in the dispensing of poor relief afforded abundant proof of the pauperizing effect of out-relief.

Without going into detail as to the many causes constantly feeding the ranks of public dependency, enough has been said to show that in our land of opportunity, where there is still enough for everybody, there is nevertheless a constant stream of human discard for the community to support and humanely lay away in the potters' field. Its volume shows no tendency to decrease. If anything, this great lateral moraine of our progress seems to mount higher and higher, and to call therefore for keener analysis than we have given it heretofore, with a view to combating causes rather than effects.

Numbers of Public Dependents, United States—According to the United States Census there were admitted during 1923 to almshouses and poor farms throughout the United States a total of 63,807 persons, there being in residence January 1, 1923, as previously stated, 78,090 individuals. This is but a fraction of the burden of dependency. Provision for the relief of distress outside the institution is universal. For outdoor poor relief in the United States there is no summary comparable to the analysis of the Federal Census on Almshouse Care. The magnitude of the operation can be guessed at only by samples taken here and there. For instance, in the older State of Massachusetts, in the year 1924, temporary assistance was given to 21,977 persons outside the almshouses. In addition to temporary aid, the cities and towns of Massachusetts aided 9,080 sick persons in local hospitals. Mothers' aid was

extended to 15,021 mothers and children. That Commonwealth also cared for 22,167 mental defectives. The insane, though coming more and more to be classified under special headings, are still cared for in many localities, as the indoor and outdoor poor. Maintenance expenditures in Massachusetts for public poor relief, including the care of defectives and exclusive of all refunds and other receipts, approximates $4.18 per capita of the population.

In Pennsylvania, a community of 9,000,000 inhabitants, the taxes levied for the support of the poor totaled $12,093,770 in 1924. In the period from 1910 to 1924 inclusive, the 67 counties of that Commonwealth raised over $100,000,000 in poor taxes. From 1900 to 1910 the population of Pennsylvania increased 22 per cent. In the same period, poor taxes increased 69 per cent.; likewise in the period from 1910 to 1920 the respective increases were 14 per cent. and 86 per cent. In the decade from 1915 to 1924 the poor taxes amounted to 5.8 per cent. of the total taxes. In 1923 a total of $1,101,372.10 was expended for out-relief to 33,781 persons, of whom 11 per cent. were men, 26 per cent. were women, and 63 per cent. were children.[7]

In Indiana, an increase of 33 per cent. in the total population from 1890 to 1920 was attended by an increase of 50 per cent. in expenditures for public poor relief excluding care in state institutions.

These samples of the extent of public dependency in the United States show a serious public burden caused by the inability of individuals to support themselves and their dependents. Old World conditions are of like complexion, enlarged only by the greater age and more crowded populations of those older communities. In 1922 there was expended throughout England and Wales a total of £19,464,407 under the old age pensions acts, reaching 863,000 persons; in the same year the sum of £42,272,555 for 1,353,014 individuals under the acts relative to the relief of the poor. An additional item of £45,228 went to unemployed workmen. This is exclusive of £15,843,-340 net outlay on unemployment insurance. Scotland in that year required £2,524,706 in old age pensions; £4,573,031 in

[7] See *Poor Relief in Pennsylvania.* Bulletin No. 21 (1925), Department of Public Welfare.

poor relief to 237,397 persons, and £56,492 to unemployed workmen. This grand total of £68,936,419 for England, Scotland and Wales represents an average of $7.83 in American money for every inhabitant.

Principles of Public Assumption of Burden—Why should the public take over the burden of relieving persons in want; of succoring the abandoned infant, the hungry and the sick? Why should it maintain almshouses for the destitute and aid hundreds of thousands of persons in their own homes? The persons who pay the bills, directly or indirectly, are the workmen, the householders, the individuals, mostly of moderate means, who are themselves spared dependency only by the fact that they are still able to carry on at the job.

It not infrequently happens that a hard-working artisan returning each evening to his wife and little ones must sit on his front stoop and listen to the quarreling and brawling of a drunkard next door. These neighbors may very likely be receiving an equal income; the worker from his toil, the ne'er-do-well from the poor funds. And as the money paid to the dependent family is raised by taxation, it is, by a well-known principle of political economy, levied directly on the property owner, who passes it along to the workingman in the price of the food, fuel and clothing he buys. As he sits on his front stoop smoking his pipe, therefore, he may reflect that his hard-earned pay is going to help buy food for his worthless neighbor, to supply him even with the tobacco he smokes.

No Legal Right to Relief—It is frequently repeated in the decisions of our courts that there is no right in the individual to receive relief out of public taxes. Poor relief statutes do impose a duty upon the relieving officers to grant aid under proper conditions, but this does not confer a right upon the recipient. Hence there is no right to receive even though there is a positive duty to give.[8]

But when government by statute declares that the poor shall

[8] The Scottish law allows the applicant for relief an appeal to the Sheriff's Court, a judicial tribunal, upon a refusal to grant relief. The German and Swedish poor laws allow appeal to the Superior Civil authority which may order the relief authorities to grant aid. In these instances, however, with the possible exception of the Scottish law, the gist of the complaint is improper execution of the poor law rather than a denial of any recognized legal right to relief.

be relieved, it definitely undertakes the burden. On what ground? If it is not the right of the poor themselves it must then be for some reason attaching to society. It is in fact, like all other acts of government, the protection of society from evils, or the danger of evils, that persons are relieved from want. The public welfare is the object aimed at. It may be true, as contended, that the English Poor Laws were an attempt by the privileged class to unload their burden of alms upon the whole people; that those laws "originated in ignorance, selfishness, and pride, and in an attempt substantially to restore the expiring system of slavery." [9] And it is a fact that early poor relief legislation in the United States was the adoption, without much analysis, of the Elizabethan Poor Law. But it is certain that neither in England nor in the States is the relief of the poor now carried on from such partisan motives. To-day it is an unquestioned principle of government that no person, whatever his antecedents or his performance in life may have been, and whatever the consequences of the relief may be, shall be allowed to die for lack of the necessaries of existence. To this extent has genuine sympathy for brother man entered into the tenets of society. It is the outcropping of that "other-mindedness" which Kidd discovers as the index of social progress.[10] The natural operation of humanity then is the foundation of public poor relief. However stupidly done, however niggardly in its quantity or shabby in quality, it proceeds out of a revulsion against seeing the other fellow starve and a genuine sympathy for those who suffer.

At bottom, therefore, public poor relief might be thought of as a true flower and fruitage of that ethical artifice of society by which man has set nature at nought, and by which he has made bold to set up his own philosophy of life. Not only will he deny the law of struggle but he will reach out into the by-way and the hedgerow and reclaim from defeat the waif, the cripple, the sick and the wretched. None shall starve for want of food; none shall die for lack of clothing and shelter. From the point of view of human society, poor relief is the expres-

[9] Mr. Nassau, Senior, quoted in *The Poor Law*, by T. W. Fowle, London, 1906, p. 9.

[10] See Introduction, p. 9.

sion of advanced ideals. It is the logical consequence of social philosophy. But from the point of view of nature, the man-made state of society is itself illogical, and the more highly he develops it the more illogical it becomes. But there are other reasons connected with the protection of the social order why society should set up a system of poor relief. If it is illogical it may be expedient nevertheless, and increasingly so as population presses upon the means of subsistence. An empty stomach knows no law, and will be served, given the opportunity and the strength. To supply wants which must be satisfied otherwise through crime tends to the preservation of order and the public peace. To seek out the abandoned waif saves a potential citizen. To bring him up to man's estate saves for society the opportunity to secure what he has to contribute as a member of society. To help a mother with dependent children so that she may bring up her little ones in her own home and under her own influence is a safeguard to unprotected infancy and, again, conserves potential citizenship. To befriend the aged gives the householder the assurance at least that his life of toil does not end with death by starvation. And the breadwinner, coughing his life out with tuberculosis, can be assured that his wife and little ones will not die of want when he is gone. Nature would destroy the waif for lack of self-help or a protector; would shuffle off the cripple as a handicap in the impatient race of life; would scatter the consumptive's brood to scratch for themselves or starve. Society would save all; would encourage population without limit, trusting to the agencies of man to discover the means of subsistence; nay, would forgive that improvidence, or other fault which in so many public dependents has been the primary cause of the distress. We may not be surprised to find then that poor relief does not permanently elevate the standard of living or of individual comfort, but that its ultimate effect is to make an increase in population possible by guaranteeing the means of subsistence, in which increase the new mouths to be fed are invariably the mouths of the miserably poor.

Human Sympathy the Basis of Poor Relief—As the economy in which we live calls for constant, unrelenting production, in which the few will take their ease and the many

must toil for mere subsistence, we should be blind to all our ideals of fairness, of compensation for wrong done to others, of justice, in short, if we were to allow the workman crippled by accident on the construction gang, the puddler in the steel mill worn out at forty-eight, and the victim of industrial disease, to lie where they fall. Society takes the benefit of their toil. It sees, though dimly, that a daily wage is not the sum total of compensation due. It learns that it must conserve the worker's health; must provide open spaces for him and for his children; must afford him leisure time for rest and recuperation; must even make a positive effort to provide for his comfort and happiness while he works on the job. It is consonant with this growing philosophy of industry that the community should lift him up in his extremity, making him fit once more; or if not that, then giving him creature comforts and softening the hardships which he must undergo. But these reasons are not sufficient in themselves to gratify a widespread system by which organized government supplies the necessaries of life to those who are without such means of subsistence, regardless of their own fault. Mere industrial justice would stop with the worthy poor, those involuntary victims of distress resulting from hard times, from accident and other misfortune. Mere protection of society in the conservation of potential citizens would stop to sort out the progeny of the prostitute; would select the better specimens and discard those likely to become a burden upon the public. Viewing the problem as a whole it must be obvious that however we explain poor relief on grounds of the protection of public morals and the public peace—let our reasoning be what you will—we come back finally to that one basic justification,—human sympathy. Without that there would be no public poor relief.

Brief Review of the English System—The English Poor Law, springing from slow beginnings in the centuries between the Statute of Laborers and the reign of Elizabeth, came to a head in the Act of 1597, perfected in the famous Statute of 1601. In this form it required the parishes to relieve their poor and levied a rate to meet the expense. Two or three overseers were to be chosen in each parish in Easter

week, who were to take orders with the consent of the justices, for carrying out the act. These overseers themselves levied a direct tax upon the public for the support of the poor. This statute drew a distinction between children whose parents were unable to keep them; the able-bodied who were without employment; and the impotent, i.e., those who were too decrepit physically or mentally to support themselves. Of these the children were to be apprenticed; the able-bodied were to be set to work in workhouses; the impotent were to be relieved.

This system continued to be the law, with little change, until 1834, when the cumulative results of misapplication of a vital principle in the Elizabethan Act forced a reform. That principle was the workhouse test. If the able-bodied applicant for poor relief must enter a workhouse where he remained an inmate at regular labor during the continuance of his assistance, his acceptance of such restrictive conditions may be taken with safety to indicate the genuineness of his distress. But if, as actually happened in the old régime, he could receive help in his own home; could even compel the overseers to aid him if by an appeal to the justices he could secure a favorable order, the one safeguard to worthiness was removed and poor relief bred apace the condition which it was designed to relieve. Any system of relief which fails for whatever cause to differentiate and differently treat the deserving poor from those who are not in genuine need of relief or who, though in distress, have come to want through evil courses, is a breeder of paupers. So marked were the evil effects of this lack of discrimination in the old Poor Law that Professor Fawcett, looking backward at this epoch, could say that "England was brought nearer to the brink of ruin by the old Poor Law than she ever was by a hostile army." [11]

The theory of the Elizabethan law that the unworthy poor must be forced out by the test of the House, was enacted into law in 1723 but fell into disuse and was completely lost sight of in a new development which occurred at the opening of the great war with France. In 1795, when prices were distressingly high and the working people were suffering for want of

[11] *Pauperism: Its Causes and Remedies.* Henry Fawcett. London, 1871, p. 25.

the necessaries of life, the Berkshire magistrates, sitting at Speenhamland, issued an edict in which they declared that henceforth they would make allowances to workingmen in addition to wages. The justices fixed the "scale" of income that every laborer ought to have, adjusting it to the price of bread and to the size of his family. With the gallon of bread at 1s. the laborer's income was 3s. With his wife the combined income was 4s. 6d. An additional allowance of 1s. 6d. for each child up to seven brought the total family income to 15s.[12]

It was a tragic mistake which spread quickly over almost the whole of England. Its evil influence, like a philter, has eaten into the nerve fiber of the English people until at every recurring bad harvest, at the outbreak of every war, and through every reconstruction period following national conflict, it has raised its ugly head in an epidemic of voluntary unemployment, idleness and disorder. In 1795, almost at once upon the adoption of relief in aid of wages, the relieving authorities began auctioning off their laborers by the week to the farmers. Independent labor was driven away or forced to go on the poor rates. Personal initiative was destroyed, and wealth, evidenced by property, was redistributed through the medium of taxes to the laborers without that socially necessary *quid pro quo* in personal effort, thrift and efficiency. The unemployed and the low-paid laborer soon came to consider themselves entitled to relief, an assumption which has risen within the present decade like a nation-wide mutiny to threaten the life of Britain.

By 1832 agricultural laborers had come to look upon public funds as a regular part of their maintenance. The poor rates were administered by some 2,000 justices, 15,000 overseers, and 15,000 vestries, each group acting with almost complete independence of each other. Says T. W. Fowle, "The £7,000,000 or more of public money was the price paid for converting the free laborer into a slave, without reaping even such returns as slavery can give. The able-bodied pauper was obliged to live where the law of settlement placed him, to receive the income which the neighboring magistrates thought sufficient, to work

[12] *The Poor Law.* T. W. Fowle. London, 1906, p. 79.

for the master and in the way which the parish authorities prescribed, and very often to marry the wife they found for him. He was, in short, as has been truly said of him, 'a work of art, and not the natural offspring of the English race.' " [13]

The Reform Statute of 1834 effected little change in the fundamental principles of the Elizabethan Poor Law. It was aimed at those practices—notably the removal of the House test and the upgrowth of out-relief as doles and a supplement to wages—by which the sound principles of the Elizabethan Act had been debased. Consequently it returned to first principles by reëstablishing the workhouse test: it abolished the plan of granting allowances in aid of wages and set up an effective audit of accounts. It declared the fathers of illegitimate children responsible for their support, and minimized to a degree the deterrent effect of settlement provisions upon the mobility of labor.

But practices which meant doles to many hundreds of thousands of individuals and which had become increasingly confirmed throughout the length and breadth of the realm, in a lapse of one hundred and thirty years—years during which the reign of machinery was ushered in, and in which problems of gang labor and widespread unemployment first began to be noticed—could not be changed merely by the passage of a statute. The application of the workhouse test to tramps and vagrants did greatly improve the conditions; but the new law did little to reduce the volume of out-relief. By 1871 there were eight persons given out-relief for every one aided in the workhouse. It is interesting to note the effect of the workhouse test rigorously applied by comparing Ireland with England. In Ireland outdoor relief was discouraged. For several years after the Reform Act no out-relief was given at all. In 1871 there were five indoor to one outdoor pauper in that country. While one in every twenty of the population of England was a pauper, but one in seventy-four of the Irish was in like circumstances, and this notwithstanding England supported a wealthy class and the Irish were uniformly poor. The City of

[13] Fowle, p. 74.

London alone in that period contained more than twice as many paupers as could be found in all Ireland.[14]

Principles of the English Poor Law—The basic principles of the old Poor Law in England were that destitution must be relieved, but that the condition of the pauper ought to be on the whole less eligible than that of the independent laborer; that is to say, worse than if the pauper had taken pains to support himself. The Reform Act of 1834 added nothing to this concept: it sought merely to return to it by the only safe guarantee for its enforcement, namely, the rigid application of the workhouse test. The Poor Law of England has always presupposed a system of doles. It was never what the American social worker called "case work." Bearing this important factor in mind, it is easy to appreciate the assertion of Professor Fawcett, sworn enemy of out-relief, that as the poor law is executed in England there is no way of differentiating between the worthy and the unworthy. "All outdoor paupers are treated alike," said he, "there is no chance of distinguishing the vicious from the unfortunate, and there is also no power of ascertaining whether the weekly allowance obtained from the parish is spent in self-indulgence or is really required to provide the necessaries of life."[15] Nothing in the experience of forty years since Fawcett wrote, in spite of the growing classification by which the insane and other special groups are given separate treatment, has altered the truth of this observation. The conclusion from English experience is that out-relief fosters voluntary pauperism; and that the greater the wealth of the community the more degraded the condition of the poor.

Legal Settlement—In concluding this chapter on public poor relief, the question of legal settlement calls for some analysis. The chief problem in the mind of the local overseer is not what the applicant needs, nor what plan of relief can be worked out for his return to self-support. It is the question of the town's liability. Does this applicant belong to my town? If I pay this bill can I claim reimbursement from some other town? If this person doesn't belong to any locality in this state, we shall be out the amount of this relief and we'll never

[14] Fawcett, p. 27.

[15] *Pauperism: Its Causes and Remedies*, p. 46.

see any reimbursement. The statutory rules and regulations which guide the overseer in determining the responsibility for aiding are known as the law of settlement.

Anciently the provisions of settlement were often included in the relief law itself. Massachusetts soon separated them. Pennsylvania incorporated them in the Poor Law of 1836. "Legal settlement is a status created by statute for the purpose of determining territorial responsibility for the public relief of needy persons in accordance with the law."[16] A settlement law contains two essential elements, namely, (1) In what way or ways may an inhabitant gain a settlement in the locality where he dwells? (2) In what way or ways may he lose his settlement? The single purpose of such a law is the equitable distribution of the burdens of public poor relief among the several local governments which make up the state.

Settlement laws throughout the United States generally require a year's residence in a given district for the gaining of a settlement. In New England the period is five years. Formerly several other ways were in vogue, such as the payment of all taxes assessed in three successive years; the purchase of a freehold or the taking of a lease with a stated minimum; or occupying a pulpit as an ordained minister; or serving in public office. But the tendency to-day is to simplify by calling only for proof of inhabitancy for a stated time.

Obviously a person may hold but one settlement at one time; and a settlement once gained would continue until lost by the gaining of another. This provision would seem inequitable were it not pointed out that the settlement law of one state is of no effect in any other, and the rule that a person continues a settlement once gained until he has fulfilled the qualifications for the gaining of another elsewhere is to be thought of only as between two contending localities in the same state.

Massachusetts, which has perhaps the most completely worked out law of settlement in the United States, sets out six modes for the gaining of a settlement, namely, (1) residence for five consecutive years; (2) a married woman takes her

[16] For a short treatise on this subject, see the author's *History of Public Poor Relief in Massachusetts,* chapter on The Modern Law of Legal Settlement.

husband's settlement if any; (3) a child follows the father's settlement if any; if not, the mother's; (4) an illegitimate child follows the mother; (5) military enlistment from the locality; (6) upon the division of a town the inhabitant follows the section of his dwelling. No person may acquire or be in process of acquiring a settlement while receiving relief as a pauper. A person settled in any Massachusetts city or town may lose his settlement by five years' absence from the locality.

If followed through the maze of hundreds of court decisions, and pursued among the repeated revisions and amendments, this law of Massachusetts is revealed as one of the most complicated statutes on her books. To a less degree, perhaps, her experience is the experience of other states. As mobility of population becomes greater in the fluidity of modern times, the ancient rules of settlement must become more flexible and a common sense rule of thumb adopted to determine which jurisdiction shall pay the bill.

## FOR THE STIMULATION OF THOUGHT

1. From what sources come the dependent poor in the United States?

2. What good does it do to continue public aid to families of defective and incompetent dependents? Is there an alternative? Can you devise a better plan, that is ethical?

3. What is a poor person? A public dependent? A pauper? Legislation is frequently sought to eliminate the word "pauper" from existing statutes. What effect, if any, would such legislation have upon the condition of the poor? Upon social relations?

4. What is the theory upon which the people through their government assume the relief of the destitute? Do you agree with the reasoning offered in this chapter?

5. If the poor-law expressly declares that the overseer shall grant aid to poor persons found destitute, why does not such declaration confer upon the destitute person the legal right to be so aided?

6. Under the Massachusetts law of legal settlement a married woman follows and has the settlement of her husband *"if he have any within the Commonwealth."* It is possible for a married couple, falling into distress to find the husband without a settlement, because of which the State Department of Public Welfare may order him sent to the State Infirmary at Tewksbury; and the wife with a settlement acquired by her, for which reason she can be sent to the local almshouse or given aid in her own home, but she cannot be sent to

Tewksbury. Can you devise a settlement law adequate to meet such inequities? State the elements of a model settlement law.

## FOR FURTHER READING

Fawcett, H.: *Pauperism: Its Causes and Remedies.*
Fowle, T. W.: *The Poor Law.*
Webb, S. and B.: *English Poor Law Policy.*
——: *Minority Report of the British Poor Law Commission, 1909.*
British Poor Law Commission: *Report of 1834.*
*Bulletin No. 21. Public Poor Relief in Penn.* (1925), *Penn. State Dept. of Public Welfare.*
*Proceedings, N.C.S.W.,* 1881, pp. 144-161; 1888, pp. 141, 153; 1891, pp. 28-49.

## CHAPTER XII

# POOR RELIEF: STATE AND MUNICIPAL SYSTEMS

When the English villagers came to Plymouth in 1620 and to the Bay settlement in succeeding years they brought a thorough familiarity with English pauper relief with them. Subject in all ways to the laws of the Mother Country, they were likewise bound by village custom. However persecuted for their apostasy, they were yet Englishmen in very deed. There appears never to have been a question that the government should relieve the destitute. As a foothold was gradually gained upon the land, villages sprang up at many points of vantage. These villages were the local units of government.

THE MASSACHUSETTS SYSTEM [1]—By 1642, twenty-two years after the first settlement, we find Plymouth enacting

"that euery towneship shall make competent puision for the mayntenance of their poore according as they shall fynd most convenyent & suitable for themselues by an order & generall agreement in a publike towne meeting. And notw$^{th}$standing the p$^{r}$miss$^{s}$ that all such pson & psons as are now resident & inhabitant & w$^{th}$in the said townes shalbe mayntaned & puided for by them." [2] This is no doubt the crystallization of a practice which had obtained from the beginning of the colony. It was in fact but a revoicing of the English Poor Law.

By 1691 Boston had grown large enough to remove the burden of poor relief administration from the shoulders of the selectmen and to place it upon a counterpart of the English Overseer of the Poor. As late as 1762 Plymouth was refusing in town meeting to remove the duties from her selectmen. In 1779 she did, however, appoint two overseers. Many

[1] For an exhaustive treatise on this subject, see the Author's *History of Public Poor Relief in Massachusetts, 1620-1920.*

[2] Plym. Col. Recs. Pulsifer, *Laws,* Vol. XI, p. 41.

of the smaller towns of Massachusetts still perform the duties of the overseers through the selectmen.

In the earliest days, presumably because of the small number of dependents, the almshouse was not used. As a general statement almshouse care was not common in New England prior to 1700. For almost a century it was the custom to deal with each case individually as it arose, and it was a common practice to present each problem to the town meeting, there to be discussed and frequently haggled over.[3] It was common to board a pauper with various citizens of the town in rotation. Thus the Town of Hadley, in 1687, disposed of the Widow Baldwin, by voting to remove her from house to house "to such as are able to receive her," she to remain a fortnight in each family: "to go from Samuel Parker's, Senior, southward, and round the town." The same community placed one Thomas Elgarr with 32 families in the space of 65 weeks, prior to 1685.

The practice of boarding paupers with the townsmen led easily to the practice of letting out the relief of the town's dependents to any one who would take it, the choice falling to the lowest bidder. This practice of auctioning the care of the poor was at one time widespread in Massachusetts. In its record form it seems crude and cruel. The practice was to bid off the yearly support of the poor at public auction. A faithful picture of the scene remains to us in the cramped handwritten records of the early selectmen. At the village tavern of a Saturday night, in the flicker of torches and the flare from the vast fireplace, the fathers of the town sat about the board, each with his pot of liquor, and with them assembled those estimable citizens, bidders for the poor, who haggled over the odd pence on each pauper, taking the able-bodied at a fair rate, avoiding the decrepit whom the selectmen sought always to throw in.

[3] The records of the Amesbury town meeting for 1768 afford a case in point. It was moved that the Widow Merener be proceeded against as a vagabond. Voted in the negative. Voted to reconsider that vote. Moved that the town support her as one of their poor. Voted negative. This vote reconsidered. Voted town take care of her as town's poor. Adjourned. Next meeting—voted to reconsider last vote. Voted that selectmen proceed against her as a vagabond. See Merrill's *History of Amesbury*, p. 242.

Too often the mother went one way and the children another; decided upon the same odd shilling in the terms.[4]

Reference to an instance of the practice is here taken from the Author's *History of Public Poor Relief in Massachusetts.* "The records of Fitchburg afford a fair illustration of this method of disposing of the poor. It was the custom there to vote at the annual town meeting 'that the poor be let out to the lowest bidder at Isaiah Putnam's this evening.' The account then relates the name of each pauper, the name of the successful bidder, and the amount which the town must pay per week. These rates varied from nothing to full support, depending upon the bidder's estimate of the amount of economic return he could get out of the person set up. At a later time this town let all its paupers to one single undertaker. Thus, the selectmen's report for 1820 contains the following: '1820 March. Conditions of Supporting the Poor. Conditions on which the Poor of the town of Fitchburg were let out for one year, from March 9th 1820 to March 9, 1821, viz., the undertaker to board, clothe and comfortably provide for, in sickness and health the persons hereafter named—and to leave their clothes in as good condition as when received—and if any of the above named persons should decease within the course of the year, the town to be at the expense of burying, and the doctor bill if any of them are sick.

" 'And if any of said paupers shall elope or run away within said time the undertaker is to bring them back at his own expense, and pay all expenses in consequence thereof—The children above named to have the same advantages of schooling as

[4] *Records of the Town of Fitchburg, Mch. 4, 1811* (Vol. V). "The selectmen a committee chosen to take care of the poor the present year have let them out as follows: Set up Ephraim Smith to the lowest bidder by the week, the person who bids him off is to keep him one year. & bid off to Benjamin Fuller—at 60 cents per week the town is to clothe him & pay his doctr bill if any. Struck off to Levi Farwell he is to give the town 35 cents per week and keep him one year. Mary Wares, on the same condition as Smith, bid off to Joel Eaton he is to have 60 cts per week. Jonas Spalding, on the same condition only the person who takes him is to give him the privilege of going to school in the winter bid off to Seth Phillips he is to have 22 cts per week. Edward Goodfellow on the same condition as Spalding bid off to Joseph Carter he is to have 8 cts per week. Rebeckah Smith set up, the person who bids her off is pay as long as he keeps her, bid off Jos. Carter he is to pay the town two mills per week."

other children in the district where they reside. The undertaker to have the benefit of the labor of said paupers, and receive his pay quarterly.' " [5]

The principle of organization in the Massachusetts system was that the relief of the poor is a local responsibility, resting upon the place of the dependent's usual abode, and since there sprang up many village communities it was inevitable that question should arise as to what should constitute the place of abode. In this manner a law of settlement became a necessity in Massachusetts as indeed it is essential in all systems imposing local responsibility upon a group of neighboring jurisdictions. This Massachusetts law of settlement, dealt with in some detail at the end of this chapter, did not arise as a repressive measure against the mobility of labor, as has been claimed for the English settlement acts, but rather as an equitable method of determining which jurisdiction shall pay the bill.

With this ingrained principle of local responsibility it was inevitable that towns should wrangle over disputed burdens. Some of the earliest cases border on the comic but they contain a fair picture of the problem to be faced in the determination of responsibility throughout all the towns and counties of America. In 1680 a dispute arose between Taunton and Plymouth as to which should support one John Harmon described as a "decriped man." The court ordered that he remain with Plymouth till June, 1681, the two towns to divide the cost, the case to be decided at that time. In July, 1682, Harmon was put upon the town of Dartmouth until it should show cause why he did not belong to it. Finally in 1683 the court entered the following order:

"In reference unto John Harmon, an impotent man, concerning whom there hath bin much debate between the towns of Plymouth and Taunton, which of said towns should maintain him, the court in the end have ordered that Plymouth shall entertaine him untill theire yeer wilbe expired, which wilbe in October next, after the date heerof, and that then the towne of Taunton shall receive and entertaine him for the space of one whole yeer, and Plymouth then to take him one whole yeer; and soe to be kept from yeer to

[5] Chapter on the Town's Poor, p. 109.

yeer, one yeer in Plymouth and the other in Taunton, successively; and that if it can be found att any time to be just and equall that any other town or townes should keep him, that it shalbe required of them alsoe to doe theirepte therin." [6]

Such a case could not arise under an adequate settlement law.

It was the custom from earliest times for the selectmen and justices to take a fortnightly walk among the homes of the inhabitants to see whether any were wasting their substance in drink and riotous living, as well as to discover instances of want. This again was a picture borrowed from English experience. In 1576 a precept of London ordered that every fortnight at least, the constable, beadle and church wardens were to visit the homes of all the poor and must order away all new arrivals who appeared unlikely to be able to support themselves.[7] The underlying purpose of this regulation was the suppression of vagabondage, that curse of the English highway. In it lay a purpose engendered by a fear which pursued the laborer and wanderer from his usual habitat and sought to force him back again. It was less the likelihood of his imposing a new burden—certain as that contingency was known to be—as it was the danger that the erstwhile tramp become a felon and perhaps the follower of some renegade prince seeking a throne.

The American colonists had no such fear, but they recognized in the practice a convenient method of protecting the community from indigent strangers and heading off improvidence by forcing idlers to work. In 1658 the Plymouth Colony enacted that

"for the preventing of idlenes and other euills occationed thereby it is enacted by the court that the grandjurymen of euery towne shall haue power within theire severall townshipes, to take a speciall view and notice of all manor of psons married or single dwelling within theire severall townshipes that haue small means to maintaine themselves and are suspected to liue idlely and loosly and to require an account of them how they liue and such

[6] Plym. Col. Recs. Shurtleff, *Court Orders*, Vol. VI, p. 113.
[7] *Journals of the Common Council of London*, Vol. XX, No. 2, p. 323.

as they find delinquent and cannot giue a good account with them that they cause the cunstable to bring them before the majistrate in theire towne if there bee any if there bee none before the celect men appointed for such purpose that such course may be taken with them as in theire wisdomes shalbee judged just and equal." [8]

The practice, paralleling the English custom, is well illustrated from the records of the Selectmen of Boston:

"The selectmen do desire the justices, overseers of the poor & constables of the town to joyn with them in ye severall divisions of this town to vissit the families thereof on Wednesday the 4th of Febry Currt and to meet at the Town House at six of the clock on the evening of ye same day to compare the remarks yt shall be then made in ye sd vissits & to consult of what shall be meedfull furder to be done in Ye Same for the welfare & good order of this town." [9]

The great fear of the colonists was that voluntary pauperism would take root. Repeatedly in the statutes and orders appears the injunction to relieving officers to take effectual care that all children, youth and other persons of able body do not live idly or misspend their time loitering. They were to see to it that such persons were brought up or employed in some honest calling, profitable alike to themselves and to the public. Persons found guilty of idleness and evil courses might be sent to the house of correction; whipped ten lashes and kept at hard labor. The children might be bound out as apprentices, a "man child" till 21 and a "woman child" till 18 or marriage.

Overseers and selectmen felt no compunction in breaking up families and placing the children out as apprentices. This practice of indenture, parent of the modern system of placing in foster homes, is dealt with at length in the chapter on Child Care.[10]

Relief was seldom in cash, a rare commodity in early days. It often took the form of cattle, for a supply of milk and veal.[11]

[8] Plym. Col. Recs. Pulsifer, *Laws*, p. 90.

[9] Boston Selectmen's Records, 2 Rep. Rec. Com., p. 68 (Feb. 2, 1708).

[10] See p. 341, *post*.

[11] Ordered "that the said cowe or heiffer in calve shalbe on May day next deliuered to Thomas Payne, of Yarmouth, who shall haue her for three yeares next ensuing, and the milk and thone half of the increase during that

Sometimes the town contributed to a fund, to which neighbors also contributed in order to help build the dependent a house. Less frequently the town built the house and took title itself until such time as the dependent could pay off the obligation. So long as numbers were few, and relieving officers knew the circumstances of every inhabitant of the village, it was practicable to treat each dependent on an individual basis. In such relief there must have been a considerable degree of justice, in spite of the endless effort of overseers to avoid new burdens and to unload upon their neighboring towns those burdens they already had.

A New Pauper Class—But when population increased appreciably, and cities began to appear, the circumstances of poor relief were completely changed. Strangers came upon the scene. The worthy poor were mingled with the plausible malingerers, and the almoner with his forms and his petty instructions was in no way able to tell them apart. Meantime there was growing up in Massachusetts a new element in the problem of public dependency which rendered public relief a positive harm to the community. This was the creation and rapid multiplication of a group known as the state's poor.

The State's Poor—Beginning with the struggle of Boston to provide for refugees driven from their homes in 1675 by King Philip's War, the general court was besought persistently by Boston and other port towns to appropriate money for such special relief. A grant was made expressly for war refugees. This act was not intended to relieve the towns of a certain class of public dependents. It was purely an emergency meas-

tyme, and after the said three yeares are expired, the poore of Yarmouth shall haue her & thencrease, to be desposed of by the townsmen of Yarmouth from tyme to tyme to the poore persons dwelling in the said towne as they shall think fitt, and for such terme, reserving the benefitt of the said stock for the benefit of their poore, and not to be allienated to any other use." Plym. Col. Recs. Shurtleff, Vol. II, p. 70.

"The selectmen being informed of y^e^ great p^r^sent want of Thomas Pellit they give order unto Stephen Hosmer to deliver a Town Cow unto s^d^ pellit for his present supply, who accordingly delivered a cow upon y^e^ account aforsd unto him s^d^ pellit which cow is of a black couler, a white face with black spotts around each eye, & s^d^ cow is to continue w^th^ s^d^ pellit so long as s^d^ selectmen Judge necessary." See *History of Concord,* by Alfred S. Hudson, Vol. I.

ure. Yet once enacted it was never repealed, and the narrowness of its scope was soon forgotten. In 1701 the province made provision for the reimbursement of the towns in the relief of all unsettled dependent persons ill with dangerous, infectious or contagious diseases.[12] By 1720 we read in the records of a class called "the Province Poor." No longer were they merely war refugees, nor were they the strangers detained on shipboard at the Castle in Boston Harbor, ill with communicable diseases. They were merely those dependents who had no known legal settlement in any town in the province. These persons were the wanderers, the rolling stones, soldiers of fortune in a new land, convicts and paupers, the offscourings from European prisons and poorhouses. They came into the province from the Canadian territory to the north, were let over the side by wily skippers in the harbor or were persons of good intent and small capacity who could not make their way in the frontier struggle of the new England. The province had taken fathership of the wandering poor.

The towns, so zealous to rid themselves of dependents if by "warning out" or by proof of foreign settlement they could unload the burden, were not so keen to expel the province poor, since they received reimbursement for all the aid given, and might, since the sum was fixed, even make a little balance by skimping the aid and charging the province with the full quota.[13] As the statute failed to stipulate the conditions under which relief should be given, the towns found themselves obliged to render aid but had no law at their backs to compel able-bodied recipients to work for the relief received. Furthermore, being unable to set the state's poor to work, they were unable to make the town's poor work, especially when both groups were mingled indiscriminately in the town almshouse. A legislative committee of 1833, examining into the abuses of the state's poor reimbursements, described conditions in these terms:

"To a great extent, they (the state's poor) have been made what they are by the state's provision for them. . . . Almshouses

[12] Province Laws, Ch. 9, 1701.
[13] See Mass. House Doc. No. 41 of 1831.

are their inns at which they stop for refreshment. Here they find rest, when too much worn with fatigue to travel, and medical aid when they are sick, and as they choose not to labor, they leave these stopping places when they have regained strength to enable them to travel, and pass from town to town demanding their portion of the state's allowance for them as their right. And from place to place they receive a portion of this allowance as the easiest mode of getting rid of them; and they take the allowance as their rations; and when lodged for a time, from the necessity of the case, with town's poor, it is their boast that they, by the state allowance for them, support the town inmates of the house. These unhappy fellow-beings often travel with females, sometimes, but not always, their wives; while yet, in the towns in which they take up their temporary abode, they are almost always recognized and treated as sustaining this relation. There are exceptions, but they are few, of almshouses in which they are not permitted to live together. In winter, they seek the towns in which they hope for the best accommodations and the best living; and where the smallest returns will be required for what they receive. . . . Nearly all of them are able, and if kept from ardent spirits and compelled to work, would show themselves able to earn their own subsistence." [14]

Upon this background of early practices it is possible to describe briefly the Massachusetts system of public poor relief as it now exists. The basic provision of the Massachusetts system stands to-day in almost the same wording as that used in its first expression in the days of the settlement:

"Every city and town shall relieve and support all poor and indigent persons lawfully settled therein, whenever they stand in need thereof." [15]

And again,

"The Overseers of the Poor in their respective places shall provide for the immediate comfort and relief of all persons residing or found therein, having lawful settlement in other places,

[14] Mass. House Doc. No. 6 of 1833.
[15] Gen. Stat., Ch. 117, Sec. 1.

when they fall into distress and stand in need of immediate relief, and until they are removed to the places of their lawful settlements." [16]

Finally,

"A city or town may furnish aid to poor persons found therein, having no lawful settlements within the Commonwealth, if the Overseers of the Poor consider it for the public interest; but . . . not for a greater amount than two dollars a week for each family during the months of May to September inclusive, or three dollars a week during the other months, except as otherwise ordered by the State Board of Charity. . . ." [17]

The amount of reimbursement allowed, prior to the amendment of 1912, was inflexibly limited to $2 a week in summer and $3 in winter. This provision more than any other factor perhaps has had a deadening influence upon the adequacy of public relief. As local officers must care for the settled and the unsettled poor in the same almshouse or under similar conditions outside the house, it was natural that all should be treated alike, and since the overseer never would think of giving a state pauper more than he could claim reimbursement for, he ended by limiting the settled poor to $2 a week in summer and $3 in winter.

The State Board of Charity Established 1863—Down to 1863 the state government had no rational mechanism for reviewing local expenditures made on behalf of the unsettled poor and no method at all of supervising the poor relief system. There were visitors to the three state almshouses. In that year, however, was created the Massachusetts State Board of Charity, first of its kind in America, a supervisory body, charged chiefly with the duty of checking up reimbursements for the unsettled poor, and with oversight—purely supervisory—of the state institutions. An interesting feature of this work was the examination of alien passengers arriving at the Port of Boston or coming from Canada overland.

The almshouse as understood in Massachusetts law was always a workhouse, intended primarily for the voluntary de-

[16] *Idem*, Sec. 14.
[17] Acts 1912, Ch. 331, Gen. Laws, Ch. 117, Sec. 18.

pendent. The Enabling Act of 1743 did but crystallize the practice of the towns in the maintenance of their houses.

"A city or town may erect or provide a workhouse or almshouse for the employment and support of indigent persons maintained by or receiving alms from it; of persons who, being able to work and not having estate or means otherwise to maintain themselves, refuse or neglect to work; of persons who live a dissolute, vagrant life and exercise no ordinary calling or lawful business; of persons who spend their time and property in public houses to the neglect of their proper business or who, by otherwise misspending their earnings, are likely to become chargeable to the city or town; and of other persons sent thereto under any provisions of law." [18]

That the towns took the statute exactly at its word is amply attested by the numerous investigations that have been made under legislative direction in the long struggle with the problem of the wandering poor. In 1790 one committee said of the Boston House:

"The almshouse in Boston is, perhaps, the only instance known where persons of every description and disease are lodged under the same roof and in some instances in the same contiguous apartments, by which means the sick are disturbed by the noise of the healthy, and the infirm rendered liable to the vices and diseases of the diseased and profligate."

Thirty years later, a "house of industry" was set up in an effort to separate the vagrant from the worthy poor. Within thirteen years of its erection this workhouse was reported to contain 61 persons who were either insane or idiotic; 134 who were sick and infirm; 104 boys and girls of school age; 28 children at nurse; and an unclassified remainder of 201, among whom were 64 men who worked at picking oakum.

It was the evil reputation of the unclassified almshouse that brought out those several steps by which the State Board acquired a gradual supervision of all local houses; and resulted in a series of exclusion acts fostered by the State Department. The first of these barred children from the almshouse and re-

[18] Acts 1743-4, Ch. 12, Secs. 1, 8.

quired the overseers to place them out in foster homes. The age limit was set at eight years, later reduced to five, and then to three. The second required that tramps, vagrants and other vagabonds, if aided at the almshouse, must be housed in quarters separated from the worthy poor and not allowed to communicate with them. A second amendment required all such dependents to work if able-bodied, and placed in the State Board of Health the power to prescribe the conditions under which they might be housed. The third restriction required the isolation of all communicable diseases, including tuberculosis and venereal.

With these mandatory provisions driving the local authorities toward classification in the almshouse, the State Board was placed in a position to lead them in the same direction by placing upon it the duty of regular inspection of almshouses with power to carry out the exclusion laws if the overseers failed. The result has been a complete renovation of almhouses in Massachusetts. An institution which remained for two hundred and fifty years a culm heap of unclassified human slag has become in the short space of fifteen years, under sound state supervision, a well managed infirmary for the aged. In this particular they have outstripped the private charitable homes for the aged, which still seek to fit the inmate to the convenience of the home rather than the facilities of the home to the needs of the aged. The cities and towns of Massachusetts now support a population of 10,000 in 135 almshouses. These occupy 11,923¼ acres and have a valuation of $6,771,-293.70. They were operated in 1925 at a total net cost of $1,586,588.25. The 10,022 inmates were in that year classified as follows: males, 75 per cent.; females, 25 per cent.; blind, 2 per cent.; defective physically, 15 per cent.; defective mentally, 9 per cent.

Out-relief until the present decade has followed closely the original English dole. The usual practice of overseers had been to relieve families and individuals with a payment of $2 a week in summer and $3 in winter. Almost never was there competent investigation of family circumstances. Adequacy was not the aim in relief. The chief activity of the overseer consisted in checking up the facts as to settlement, to the end that

responsibility for the charge might be shifted, if possible, and the liability assumed only after proof. Hundreds of decisions of the supreme judicial court on questions of settlement attest the litigious attitude of town officials. In many of these cases the amount at issue was appreciably smaller than the costs of suit. The welfare of the poor themselves appears to have been a secondary consideration.

But a transformation in Massachusetts out-relief has set in. It began with the advent of mothers' aid. When the movement for special relief for mothers with dependent children swept over the United States in 1912-13, the state of the law and of practice in Massachusetts was such as to define mothers' pensions for what they really are,—a species of poor relief. When therefore a mothers' aid law finally was written, it not only professed to give poor relief rather than a pension, but it made the overseers of the poor the channel for distribution and attached to it the basic principles of modern family case work. Because of the Massachusetts phenomenon of state aid and town aid administered side by side through the town overseers, the State Department of Public Welfare was given supervision of all mothers' aid relief and empowered to refuse reimbursement in disapproved cases.

A staff of trained social case workers in the employ of the department immediately entered the field and began a process of coöperative reconstruction of local outdoor poor relief. Since the regular pauper aid and the mothers' aid cases were relieved from the same offices by the same agents and lived in the same neighborhoods, it was inevitable that either the standards of mothers' aid must be kept down to the pauper dole basis or else that the pauper aid must be elevated to a case work basis. The mothers' aid law required that "the aid furnished shall be sufficient to enable the mothers to bring up their children properly in their own homes." [19] The result has been an abandonment of the old set maxima which never had existed in the local relief laws but which had been adopted from the state reimbursement provisions by analogy. Overseers at the present time tend to relieve their town dependents on an individual

[19] Mass. Acts 1913, Ch. 763. Gen. Laws, Ch. 118, Sec. 2.

basis approaching adequacy. The principle of "less eligibility" of the old English practice still lurks at the back of the official mind, but as trained investigators gradually replace almoners in the public field the need grows less for holding the dependent in misery in order to prove his wretchedness. Public relief is approaching better standards throughout the country, because of more enlightened views on rehabilitation and individual betterment. The Massachusetts system has been accelerated in that same direction, somewhat, by the new standard of relief written into her law.

The Pennsylvania System—The Pennsylvania system, as a second example of public poor relief in the United States, is, like that of Massachusetts, an outgrowth of the Elizabethan Poor Law; but unlike New England, which never adopted the county system as a true unit in local government, it shows how a plan adapted to village sovereignty can be made to fit a county system of government. That the transformation in Pennsylvania has been attended by all the pains of a rebirth is evident from the present state of the law and practice in that Commonwealth.

Poor laws appeared in the province as early as 1676 when it was provided that

"For the making and proportioning the levies and assessments for building and repairing the churches, provision for the poor, maintainance for the minister; as well as for the more orderly managing of all parochiall affairs in other cases exprest, eight of the most able men of each parish be . . . chosen to be overseers," etc.[20]

And further,

"that in regard the condition of distracted persons, may be both chargeable and troublesome and so will prove too great a burthen for one towne alone to beare, each towne in the Rideing where such persons or persons shall happen to bee, are to contribute towards the charge which may arise upon such occasions." [21]

[20] Duke of York Laws, 1676. See *Charters & Laws of the Province, Published by Secretary of Commonwealth,* 1879, p. 18.

[21] *Idem,* p. 64.

In 1682 the great law or "The Body of the Law" enacted a provision which definitely placed those in distress in the care of county justices. Chapter 32 provided

"That if any person or persons shall fall into decay and poverty, and not be able to maintain themselves and children, with their honest endeavors, or shall die and leave poor orphans, that upon complaint to the next justices of the peace of the same County, the said justices, finding the complaint to be true, shall make provision for them, in such way as they shall see convenient, till the next County Court, and that then Care be taken for their further comfortable assistance." [22]

This provision was abrogated by William and Mary in 1693, and it was not until the Act of 1705 that a general relief act was passed. By the opening of the new century the problem was large enough to call for general recognition. This enactment of the IV of Anne, therefore, set up overseers of the poor and established the method of their selection. It also gave them the duty of levying poor rates upon their several districts "to be employed for the relief of poor indigent and impotent persons in habiting within the said township." The Elizabethan clause governing liability of relatives was incorporated. In addition, the overseers were authorized "to set on work the children of all such whose parents shall not be by said justices thought able to maintain them; and also to put such children out apprentices for such term as they in their discretion shall see meet." An order from the justices was requisite to the securing of relief from the overseers.

That the full purposes of this enactment were not obtained is attested by a law of 1717,[23] which in addition to certain settlement provisions declared that every recipient of relief must wear a badge to identify him as a public dependent.[24] For refusal to wear this brand, the dependent might be refused

[22] *Charters & Laws of the Province*, p. 115.

[23] IV Geo. II, 1718, Ch. CCXXIII.

[24] "Every such person as . . . shall be upon the collection, and receives relief of any county, city or place, and the wife and children of any such person cohabiting in the same house . . . shall, upon the shoulder of the right sleeve of the upper garment of every such person, in an open and visible manner, wear such badge or mark as is hereinafter mentioned and

relief or sent to the House of Correction for not exceeding twenty-one days, whipped and kept at hard labor.

A general act, echoing directly the provisions of the Statute of Elizabeth, was passed in 1771. Following the Declaration of Independence this statute was reënacted, in which form it remained the law until 1836 when Pennsylvania, perhaps catching the reform fever from the English Parliament, rebuilt her poor law, setting out in much detail the procedure in settlement, removals, liability of relatives, desertion, vagrancy, penalties and the like. This act is fundamentally the law of Pennsylvania to-day. It is necessary therefore to describe it somewhat in detail.[25]

The overseers of each district, township or borough are required to "provide for every poor person within the district having a settlement therein, who shall apply to them for relief." If he has no settlement he must be aided until his removal. If he is able-bodied but cannot find work the overseers must provide work for him, and for that purpose may buy materials and set up a place for such work. Or they can employ him in work on the roads. If he is not able-bodied, he must be provided with "the necessary means of subsistence." But no person shall be relieved unless and until he present an order signed by two magistrates of the county.

The overseers may contract with any person for a lodging for any poor person and may take the benefit of his labor as reimbursement for his keep. This provision authorized the old New England auction. And the overseers were also empowered to apprentice all poor children, males until twenty-one, females until eighteen. But for the exercise of this function they must in each instance have the assent of two or more magistrates of the county.

The statute then sets out eight modes of gaining a settlement, namely, by inhabitance and any of the following: (1) service in public office for one year; (2) the payment of

expressed, that is to say, a large Roman (P) together with the first letter of the name of the county, city or place whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the overseers shall be directed and appointed."

[25] Laws of Pennsylvania, 1836, Ch. 168.

taxes for two successive years; (3) bona fide ownership of a lease worth $10 a year dwelling on the property and paying rent for a year; (4) a freehold for one year; (5) unmarried servant, bound or hired, serving one year; (6) service as bound or indentured apprentice for one year; (7) an indented servant direct from Europe serving sixty days (to gain new settlement if removed and serving twelve months in the new place); (8) any mariner or other healthy person coming directly from a foreign country and dwelling twelve months. A married woman followed the settlement of her husband: an illegitimate child, that of the mother at the time of its birth.

How much the colonies were at one in the problems of inhabitancy and the support of the poor is shown by the provision of this Pennsylvania statute, so common also in New England, that every housekeeper who received any newcomer (except a mariner and other healthy persons coming directly from a foreign country) must give notice thereof in writing to the overseers within ten days, or reimburse the overseers for all aid or for burial expenses if such should be required. The magistrates could cause the removal of any such prospective dependent, but in so doing, the separation of husband and wife is expressly forbidden. Any one who brings and leaves in the Commonwealth a person who later becomes dependent is subject to penalties. Colored dependents are specially referred to: owners were held for all overseers' charges.

The Elizabethan clause governing the liability of relatives in the line of consanguinity up and down appears in this Pennsylvania law as in most other of our American relief statutes. Desertion of children was declared to be ground for seizure of the property of the deserter by the overseer and the person of the deserter in the absence of property. If upon trial sufficient property was not found the deserter was committed to jail.

Having included the subjects of poor relief, settlement and desertion, the old law then proceeded to incorporate a vagrancy statute, declaring that any of the following five classes of persons should be liable to penalties for vagrancy: (1) any removed person who returns without a certificate of liability from the place to which he was returned; (2) any person who

though poor lives idly and refuses to work for prevailing wages; (3) any person who refuses to do the work which the overseers prescribe; (4) any person wandering abroad and begging; (5) any stranger from the outside who lives idly and can give no good account of himself.

The enlargement of the local unit for administration of poor relief came through the rapid growth of the state in industry and the influx of foreigners. The burdens of out-relief mounted at an alarming rate. Consequently there was an increasing demand for some method of checking voluntary dependency, especially by setting the poor to work, whereby they might provide a part at least of their own support. A minutely divided system of boroughs and villages, with what was in fact a bifurcated system of control, could not cope with the problem.

In 1798 an act was passed providing "a house of employment and support of the poor" in the counties of Chester and Lancaster. In the seventy-five years following this act a total of seventy-eight special laws were enacted setting up poor-house districts. Their object was the setting up of work-houses where the poor might help to support themselves.

But the Act of 1798 does not mark the beginning of almshouse care in Pennsylvania. In 1713 the Quakers began institutional relief among themselves by setting up a number of small cottages for poor inmates. In 1731 the first municipal almshouse was opened at Philadelphia. To-day there are eighty-six county homes, almshouses and poor farms housing an average of eight thousand dependents at a per capita cost of about $1 per day and showing a valuation of approximately $2,000 per inmate.

This general metamorphosis from borough to county unit in relief developed a hybrid in the form of centralized districts. Some counties, not satisfied with the regular county unit, set up poor districts comprising contiguous cities, towns or boroughs. The first of this group was erected in 1857 and contained Jenkins Township, Pittston City and Pittston Township. While these districts have yielded no advantages in administration, they have added one more complication in the effort of modern times to bring order and uniformity out of the old system.

Modern Poor Law Administration in Pennsylvania Dates from 1836—Since 1836, when modern times in Pennsylvania poor relief may be said to begin, several poor law commissions have recommended and strongly urged the abolition of the township and borough system. Factional interest and pride in village sovereignty have stood out stubbornly against reform. But the movement was grounded in sound principles of poor relief and must sometime prevail. In 1925 a complete reform act was drafted. The aim was to root out the township and borough system forever. But local politics once again defeated it in a considerable measure. Eight counties and parts of three others rescued themselves unscathed from its provisions, and are therefore free to continue the ancient plan.

At the present time the several units for the administration of the system are as follows: The cities of Philadelphia and Pittsburgh, each with a Department of Public Welfare; forty-four counties with the county unit system, in fifteen of which three county commissioners act as directors of the poor, and in twenty-nine of which the governing body is a board of three directors of the poor regularly elected; seven centralized poor districts confined to three counties in the anthracite region; and a large remnant, containing the eight counties already referred to and such parts of the poor district regions as fall outside the districts, which follow the township and borough system. There are altogether 516 township and borough districts.

As might be expected, such heterogeneity formed a poor matrix from which to develop modern standards of relief. The thorough survey made for the State Department of Welfare by Mr. Emil Frankel in 1925 [26] sets out with brutal frankness the tale of inadequate doles, inhuman treatment and the other usual attendants of an ignorant process of relief seldom tempered by reason, and softened if softened at all, only by a fleeting sympathy.

Though the county unit afforded greater opportunity for

[26] Poor Relief in Pennsylvania. A State-Wide Survey. Bulletin No. 21, 1925. State Print, Harrisburg.

systematic effort than could be obtained in the smaller unit, looking to the kindlier assistance of the worthy poor and the curbing of voluntary paupers, much of this advantage was lost in the Pennsylvania counties through the procedure almost uniformly followed. Each county was generally divided into three districts, one for each of the three commissioners or directors. As a rule also, each director was the independent dispenser of relief in his district. He decided who should be aided and by how much. He cut off cases or kept them on. In a few counties the superintendent of the almshouse was relied upon by the board to decide upon applications. In this manner the advantage of a trained welfare worker acting as executive subject to the decision of three commissioners acting as a board in all matters of planning and policy was completely lost.

As to method of determining the need and dispensing aid, Pennsylvania practice has nothing new to offer. It is no better and no worse than that of Massachusetts or Indiana. It is the regulation method. No one is aided except he apply on his own initiative. The Pennsylvania officers usually require that a written application on behalf of the poor person be signed by at least one justice of the peace. It is frequently signed by other witnesses as well. No such proof is required in Massachusetts. Upon receipt of the application an "investigation" of the case is made. In the words of Mr. Frankel: "In most cases where the investigation is carried on by the directors themselves it resolves into this: Does the applicant belong to my poor district? Does he or does he not need relief? Is he 'worthy' or 'unworthy'? There is seldom an inquiry into the particular circumstances leading to the necessity for public relief and an attempt to find out the underlying difficulties the family or individual is facing, in order to set up a workable plan for immediate treatment and future rehabilitation. The investigation is seldom carried beyond perfunctory interviews with members of the family in the home. . . . Extensive inquiries are seldom made of relatives, employers, hospitals and social agencies to discover what seems to be the real trouble, which is seldom apparent on a single visit to the home." [27] That is to say, the philosophy of public out-relief in Pennsyl-

[27] *State-Wide Survey*, p. 58.

vania as in Massachusetts and all the other states is one of doles rather than case work. The only thorough investigation made by overseers in America is the inquiry into settlement. Has this person acquired a legal settlement in my district by any one of the methods provided by law, so that we are chargeable for his support? Is there any way, technical or otherwise, by which we can shift the charge to some other county, district or town? It is probably a fair criticism to say of the first overseer, appointed in old England in 1572, as of the last one called to office in America in 1927, that were it not for the inquiry into legal settlement, he would not be conscious of any real necessity for leaving his desk to make a visit. The truth must not be lost sight of, however, that where units of administration are extensive enough to provide large numbers of cases, it is becoming increasingly the practice to delegate the duties of the old time overseer to a trained welfare worker who puts his or her time on the problem of need and the way to meet it. That is to say, modern social work is facing a change from doles to case work.

Effects of the Dole System—The effect of this chronic failure to investigate the need is always an inability to keep out the malingerer. The Pennsylvania Survey cites an instance of one county in which 501 applications were received in a six-months period and all of them aided. At this point a trained worker was placed in charge. During the next six months 605 applications were received, of which 299, or about half, were refused after investigation.[28] It may be said without fear of dispute that any dole system of reasonable extent can employ a trained case worker and save more than her total salary and traveling expenses the first year without the slightest injustice to the worthy poor.

Mechanical doles seldom afford adequate relief. They constitute a meager sop to all comers. The Massachusetts "2-and-3" system overaided only the unworthy. In twenty-three poor districts of Pennsylvania, reporting for 1924, two thousands families were relieved, over 80 per cent. of which received less than 66 cents a day. The average monthly relief per family was $10.45, which figured out $2.42 per individual

[28] *State-Wide Survey*, p. 59.

per month. This is the equivalent of 35 cents per family and 8 cents per individual per day. Sample studies indicate that the average duration of live cases in Pennsylvania is three years, and the average amount of aid $80 per year. It is likely that these figures will stand for any of the northern states.

This condition of affairs is not the fault of the overseer, once granted that he is to conduct a dole system. It is obviously impossible to give adequate aid to all comers. The officer has no recourse but to divide the estimated number of applicants into the total which he can safely ask of the taxpayers and dole out the result. The moment he talks adequacy, he must make up his mind to pick and choose among his clients. He must seek out existing legitimate means of support and refuse to aid. He must discover money hidden in the bank and refuse to aid. He must make sure that there is nothing wrong with the physical heart of the strapping loafer who should head and support his family, and refuse aid. In short he must do what the trained welfare worker did who turned down the 299 applications. Once rid of the voluntary dependent, the sum thus saved can be turned to the rehabilitation of families genuinely in need.

Very little pauper aid is distributed in cash. The regulation method is to give orders on the grocer. Where there is neither family budget planning nor follow-up, it would be unsafe to allow cash. A new possibility is seen in mothers' assistance disbursements where the majority is in cash. Here, however, the homes are visited, a family budget is set up and a trained case worker helps the mother to work out the plan in friendly fashion. Under such circumstances, cash disbursements may be entirely safe and frequently increase the pride and self-reliance of a struggling mother.

In Pennsylvania as in Massachusetts, mothers' aid has engendered a new philosophy into the local communities in the matter of poor relief. Meantime the State Department of Welfare functions on a new basis, and is definitely taking the lead in urging the development of a thoroughgoing system for the Commonwealth in which the state shall carry the power of supervision while the county administers poor relief.

The Indiana System—A third valuable illustration of the development and present operation of poor relief in the United States is that of the agricultural State of Indiana. Not erected into a sovereign state until 1816, at which time the poor relief practices of Massachusetts were almost two hundred years old, Indiana had been a territory after the firm establishment of a Federal government. It will be instructive therefore to note the appearance of the same evils in asylum and out-relief which beset states of different origin with much the same reactions from the tax-paying public.

By the territorial law of 1790 each township in the district contained one or more overseers of the poor appointed by the courts of general quarter sessions of the place. That is to say, the English practice of the village or parish overseer was in force. But the Indiana overseer had no power to grant aid: he could only report cases of distress to the justices of the peace who did the relieving. The present system of outdoor relief began with an Act of 1795 which authorized the appointment of "two substantial inhabitants" in each township, with power to raise funds by taxation for the relief of the poor and the establishment of workhouses for such as were able to labor. In 1799, four years after the inauguration of the iniquitous Speenhamland system in England which resulted in the debauching of labor and the auctioning off of working men to various local employers, the overseers of the Indiana town were given authority to farm out public dependents to the lowest bidder. It does not appear that this power was used to depress the condition of the laborer. It is more likely that it arose out of the American colonial practice and never went farther than letting out the yearly care of the poor to various contractors.

A serious backward step taken in the same year was the shifting of the financial burden of poor relief from the township to the county. Thereafter the township overseer spent the funds and the entire county was called upon to pay the bill. As might have been expected, the desire of each township was to get as large a share of the taxes as possible, seeing that some other township might well get more relief than its fair proportion of the tax contribution.

In 1852 [29] the township trustees were made ex officio overseers of the poor, combining that with all other duties, such as superintendence of roads, ditches, schools and elections. The township trustee was an elected official, in no wise trained to the particular service of relieving persons in distress.

The stage was now set for mounting out-relief on a dole basis. There was no supervision of any kind. The 1,014 townships stood each a law unto itself, responsible to no one. Its trustee had a free hand. He decided what constituted proper care of the dependent; wherefore he sent some to the county poor asylum, gave aid to some in their own homes and passed others along to the next township to get rid of them. He presented his bills to the Board of County Commissioners who paid them, usually, without question.

In this system the county commissioners were given the power in their discretion to make annual allowances "not exceeding the cost of their maintainance in the ordinary mode," to adults of sound mind and to the parents of idiots and other helpless children if they were not able themselves to provide for them. The commissioners also were empowered to supply medical service for the poor, including the inmates of the county asylums and the correctional institutions.

Of the township trustee the bulletin of the Board of State Charities for March, 1906, says:

"He came to the work untrained, inexperienced. Other duties of the office were pressing. He was poorly paid and without assistance, as a rule, in carrying on the work. It was easier to give applicants what they wanted than to take the time or incur the expense necessary to make a careful investigation into their condition and actual needs. A trustee who was inclined to conduct his office in a more businesslike manner was often met with political pressure or the importunities of friends or relatives of the poor. When an applicant for aid failed to get what he wanted from the overseer, he applied to the county commissioners, frequently with success." [30]

And so it came about that here, in a land of plenty; with vast reaches of fertile soil; where even the ne'er-do-well could

[29] See Indiana R.S., 1881, Ch. 95.
[30] P. 71.

have lived comfortably if he could get himself a hut in some valley and manage a dog and a gun; the numbers of public dependents increased so rapidly that by the year 1896 the total receiving relief outside the asylums and other institutions represented one in every thirty-one of the population. Instead of relief of the poor the system was fast becoming a mechanism for redistributing wealth through the medium of government. Conditions became so alarming that efforts were set on foot to establish a state-wide system which could supervise local expenditures. The result was the Board of State Charities, set up in 1889.

The new State Board soon applied itself to the task of systematizing and regulating outdoor relief. An inquiry sent to township trustees brought answers from less than one-third of them. Examination of county books showed an outlay of $560,232.65 in 1890. The per capita cost of out-relief varied from five cents to eighty-four cents in the various counties. In 1895 the total outlay went to $630,168.79.

In 1895, at the instance of the State Board, a law was passed requiring trustees to report their cases to county commissioners with certain data before payment should be legal, a copy of all reports to go at regular intervals to the State Board. This law marked the beginning of a state supervisory system and by that same token the start toward constructive service in Indiana poor relief. The first reports of the State Board on the local returns were a revelation of incompetent relief giving, of doles administered in the time-honored style. One county showed one person in every thirteen of the population in receipt of aid.

The second move of the State Board was a law requiring the township trustee to make a levy against the property in his township to reimburse the county for all monies paid out for the relief of his poor, the tax to be collected in like manner with all other township taxes.[31] This step, though it left the county treasurer in charge of the funds, did in fact inflict the sting of payment for poor relief upon the neighbors who sanctioned its expenditure. If they approved a free hand by their trustee they must pay the fiddler from their own pockets. No longer could they disport themselves in the fallacy that if the

[31] Indiana Acts, 1897, p. 230.

county paid it they ought to get as much spent in their township as possible.

The result of this measure was electrical. In the next year, 64 townships called for no levy at all; in 515 it was less than five cents; while in 435 it ranged from five to thirty cents on $100. In the year before this change, a total of 82,235 dependents had received $388,343.67 in aid. This was already a total much reduced below the unsupervised peak of 1896. But in 1898 the total of dependents was but 75,119, and the total of aid only $375,206.92. By 1900 the total bill for outdoor relief throughout the state had fallen to $209,956.22. Thus in five years after the beginning of intelligent state oversight of local outlay, the total number of persons aided dropped from a figure close to 80,000 to less than 47,000, and the money spent from about $600,000 to $209,956.22.

If by any chance this drastic reduction in pauper aid had added only to the wretchedness of the destitute; if, as here supposed, it had not been merely the lopping off of the voluntary dependent; it would be natural to expect a marked increase in the almshouse population immediately upon the removal of outdoor assistance. Indeed many counties contemplated enlarging their asylums as a measure of preparation for this very contingency. A wise State Board advised them to wait and see. They did, with complete justification for the advice.

A census of the inmates of the ninety-two county poor asylums of Indiana on August 31, 1891, showed 3,253 dependents present. On August 31, 1899, after the marked reduction in out-relief, the asylum population numbered 3,133. In 1900, as already indicated, out-relief dropped 34 per cent., yet the asylum census for August 31 of that year showed only 3,096 inmates. The 1905 census showed 3,115. Thus while the general population of the state increased 14 per cent. between 1890 and 1900, the population of the county poor asylums decreased 4 per cent. from 1891 to 1905. It is irrefutable proof that unregulated outdoor relief—especially local disbursement without a supervisory system emanating from the largest unit of government, the state—is a self-perpetuating evil unmixed with good. It is the most effective pauperizing

influence yet invented by civilized man. It is proof also of a conclusion now dawning upon the world, namely, that public outdoor relief must be skilled case work or nothing. Experience reveals but two methods of combating the voluntary pauper. The first is the English invention of the workhouse test—force all dependents into the house, where the malingerer will not go. Modern social needs make such a test impracticable, as the day of the unclassified almshouse has passed. The place to relieve dependents where practicable at all is at those respective stations in life where with help they may continue to carry on. Of these the most important is his own home. The other check is intelligent investigation of need, followed by careful planning in the application of aid, that is to say, trained case work. Modern social work discards the unclassified house altogether, saving only that aspect which makes it an infirmary for the aged. All other institutional cases should go to special care, such as the insane, communicable diseases, children, and the like.

Relief of Public Dependents in Cities—Thus far we have discussed the local unit of poor relief administration as if it were always the small village or township with the small town official in charge. When such a local unit expands into the metropolitan city a new phase of administration appears, causing variation in method though without striking change in results. It remains to describe municipal poor relief somewhat more fully before proceeding to a statement of the principles of form and action in the relief of public dependents.

Boston—Boston's poor relief mechanism differs in theory not at all from the smallest town in the Commonwealth. As a town in colonial days her selectmen were also overseers of the poor. In 1691 a separate board of overseers was created with the same powers. Later as the volume of the task increased, the problem of almshouse care was set off from out-relief and added to corrections, so that charitable and correctional institutions should be in the same hands. Correctional schooling for wayward youth was placed in the same category. At the present time therefore, the city almshouse is administered independently of the Overseers of the Public Welfare, who have charge of all outdoor relief.

The Boston Overseers consist of a board of twelve citizens chosen at large by the mayor. They serve without pay, for three-year terms. They select their own chairman and their own secretary. Their executive is a salaried officer, selected in accordance with civil service regulations, who serves at the pleasure of the Board. In common with all other city departments, the Overseers submit their budget annually and receive their allotment on an estimate of the total probably needed for the ensuing year. They are required by statute to relieve all persons found in distress in the city, but are by other provisions of law not permitted to exceed their appropriations. They do, however, frequently report a deficit, being allowed by tacit consent to meet the needs of the poor even though unemployment or other hardship may swell the total beyond funds legally available.

The number twelve was settled upon in an early day when the city was divided into twelve wards, and though choice of members is in theory to be made at large, the practice has been to seek representation from all the several districts of the city. This practice has led to an evil in administration akin to the three-headed control in some Pennsylvania counties. Each overseer has grown to be supreme arbiter of pauper aid in his district. Carried to its logical conclusion this would mean twelve poor districts with little or no central control. Of late years this condition has been much improved.

Another difficulty in administration still besets the Boston Board. It undertakes as a committee of the whole to pass upon the question of giving aid in each of the five thousand cases coming to its attention every year. It is not uncommon for this Board to "hear" three hundred cases in the course of an afternoon. Aside from the impracticability of this plan due to the great volume of cases, it violates a cardinal principle of board action which results in making the secretary a clerk rather than an executive.

The visitorial staff consists of fifteen paid agents who average a case load of 223. This is to be compared with a standard case load in the best private relief agency work of something less than sixty, and illustrates one of the chronic ailments of public poor relief, namely, the unwillingness of

the community to employ sufficient trained assistance to deal with cases individually or to handle the whole grist on any genuine basis other than doles. Boston needs a corps of fifty trained case workers. From experience in other localities it is altogether likely that the additional salary outlay would be more than offset by savings in the relief budget through the cutting off of unworthy cases. During eleven months in 1925 a total of $1,562,144.96 was distributed to sixteen thousand persons, representing one in every forty-nine of the population of the city.

By an anomaly the care and custody of dependent children has been divorced from the Overseers and made a subdivision of the Institutions Department. In accordance with New England custom, the city maintains no orphanage but places in foster family homes all children suitable for such treatment and sends the institutional cases, usually the sick or the defective, to the various institutions existing for that purpose.

During the decade beginning with 1916 the total of out-relief in Boston has increased 257 per cent. In the same period the corresponding budget of the private relief agencies has increased 265 per cent.[32] The relief chart of the Russell Sage Foundation shows that in thirty-six large cities of the United States the increase in relief outlays, for public and private agencies together, during the same period, has been 315 per cent.

PHILADELPHIA—Philadelphia, like Boston, administers local relief through a department of public welfare, though this does not cover the entire metropolitan area. There are six independent poor districts in the area comprising the former townships of Bristol, Germantown, Oxford and lower Dublin, Byberry, Moreland, and the Borough of Roxborough. There are three almshouses aside from that of the city proper.

Philadelphia, in 1925, counting all organized relief in families whether from public or private funds, gave a general per capita of 51 cents to poor relief. Boston with less than half the population gave $1.92. In addition to this disparity, the anticipated load of public dependency is somewhat greater in the Pennsylvania city. The index figure for the cost of

[32] See Bulletin of the Boston Council of Social Agencies, Jan., 1926, p. 4.

living exceeds that of Boston by 3.5 per cent. Between December, 1914, and June, 1925, rents jumped 76 per cent. as against 52.9 per cent. in Boston. There were 5 per cent. more unskilled laborers, while the number of workmen engaged in manufacturing was greater by 10 per cent. The Pennsylvania law, again, affords somewhat less protection to the laborer. There were thirty thousand machinists in Philadelphia in 1925, as against five thousand in Boston. These differences should argue a somewhat greater total of accidental and other dependency. In a survey of Philadelphia made in 1926[33] the fact is brought out that the average per capita spent in twelve large cities in the United States, public and private funds considered together, was 82 cents. In six cities with more than five hundred thousand population it was 85.8 cents.

Philadelphia and Boston, so similar in many aspects of charitable activities, have differed greatly in their respective policies in poor relief—as to method they have been nearly identical. Boston has followed a policy of ever-increasing generosity toward applicants for public aid. Of all the cities of the New World, including Canada, she is perhaps most like old England in her poor relief. Philadelphia in 1879 cut off all public out-relief, and still maintains her refusal, nominally, though public subsidies to private relief agencies, to some degree, and the new mothers' assistance disbursements give her in fact a considerable volume of family relief in the home.

Brooklyn in 1878 cut off out-relief. In 1877 a total of $141,207 had been distributed to 46,350 persons. In that year also the almshouse contained 1,371 persons of whom 1,106 were in the almshouse proper. The Society for Improving the Condition of the Poor distributed $17,335 to its needy families. The forecast from the sudden stoppage of out-relief was that a much heavier burden would be thrown upon the private relief agencies and that the almshouse would be quickly overcrowded. The actual fact was that in 1879 the almshouse contained only eighteen more than it held in 1878 and the total dropped to 1,171 in 1881. The private society experienced no increase in demands. The hospital department of

[33] *Philadelphia Relief Study.* Published by the Family Welfare Society, 1926.

the almshouse jumped from 265 in 1878 to 331 in 1879 and fell in 1881 to 294; while the decline in the almshouse wards was 48 in 1879 and 229 by 1881. Thus the almshouse in the critical reaction years received fewer indigent and also fewer infirm. The fair inference is that those who demanded out-relief when it could be had got along somehow without assistance after it was stopped.[34] The Philadelphia experience is identical, both as to almshouse population and the burden upon private relief agencies.

## FOR THE STIMULATION OF THOUGHT

1. Compare the respective settings in which Massachusetts, Indiana, and Pennsylvania have developed and are now operating their poor laws and appraise the relative importance of their variances in governmental organization such as the town system in Massachusetts, the borough and district plan in Pennsylvania, and the county unit in Indiana.

2. The A family lives in a poor district, among other families of working people who make a bare living by odd jobs for the men and the making of artificial flowers at home for the women and children. The death rate is high and tuberculosis very prevalent. The head of the A family dies of tuberculosis and the overseer begins aiding his wife and children. On the floor above them as well as on the floor below live families so poorly off that they do not measure up to any standard of living declared by the U. S. Department of Labor or the private family relief societies. What should be the standard of living aimed at in the Overseers' plan of relief? Granting that the relief to be given should be adequate; to what should it be adequate? The neighbors, though miserably poor, still get along by their own efforts and have received no public aid. Is the A family to be in better case by reason of their falling into dependency; or must public aid be limited to the level of living in which the dependent is found at the outset of public aid? If this situation reveals injustices what are they?

## FOR FURTHER READING

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Odum, H. W. and Willard, D. W.: *Systems of Public Welfare.*

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[34] See Report on Outdoor Relief in U. S., by Seth Low. Proceedings Natl. Conf. Char. & Corr., 1881, p. 148.

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## CHAPTER XIII

## OUTDOOR AND INDOOR POOR RELIEF

With the foregoing illustrations of the application of pauper aid as a guide, accepting them as typical of the process wherever found, it is possible to discuss with some concreteness the sound principles which experience dictates as applicable to constructive governmental relief of the citizens in distress.

General Principles of Organization—Modern society so far recognizes an obligation to the individual who through no fault of his own finds himself in want and without ability to help himself, as to establish the obligation of government to assist him, at least to the extent of providing those necessaries of life which he is unable to secure by any other valid means. It is a first tenet that

1. *Public relief is sound in principle and should be granted.*

The experience of England for five centuries and the American settlements for three proves beyond peradventure that wherever relief is given without thorough investigation of the need and careful planning as to the application of the assistance given, there will the malingerer enter and claim his share, and relief intended for the worthy soon comes to be a scattering of largess among the clamorous. It may be set down as a second tenet therefore that

2. *Doles are not justified under any circumstances; and that public out-relief on a dole basis is an anti-social process tending to pauperize the community.*

The workhouse test as used in England and in the early American colonies is a valid instrument for checking the unworthy, but it involves throwing all dependents into the almshouse. Modern society discards the unclassified almshouse, insisting upon special treatment for the child, the contagious sick, the insane and the like, keeping the house only for the aged and infirm. It is impracticable at the present day to insist upon institutional care for all dependents. Those able to get along

in their usual station in life with a degree of assistance should do so. It follows therefore as a third principle of action in poor relief that

3. *The almshouse which was the central element of public poor relief in former times can be to-day only an adjunct, forming one recourse in the treatment of the aged and infirm. Some other check must be found for identifying and eliminating unworthy applicants.*

Great needs call for great remedies. As population crowds ever more closely in our urban communities, and neighbors become strangers to each other, so that neighborhood pride fades into insignificance, the shame of public dependency tends to become replaced with the feeling that as every one else is getting public aid, why should not I? This brazen attitude toward the process of public relief creates a great need for some valid check upon the dishonest applicant. To meet that need as well as to help the worthy poor, the family welfare societies with their cult of case work have come into being. By the method of cut-and-try they have now developed a sound process of handling applications for relief. This method they call case work. It involves a thorough inquiry into the need, the outlook for rehabilitation, and the means by which the need can be met. It is the only valid check in modern relief. The fourth standard in public relief should be therefore that

4. *Case work, in which a trained investigator searches the need and its causes; the outlook for improvement and the likely means of effecting it; aiming always at replacing or readjusting the individual in his proper setting in society, is necessary to public as well as to private poor relief; because it represents the only sound method of protecting society while relieving the wants of the individual.*

The contention regarding adequacy in the amount of public assistance has been age-long. It began with the English doctrine of "less eligibility," that is to say, that no public dependent should be put into circumstances through relief that are as good as the poorest among those who pay taxes for his support. That doctrine reduced to simplest terms presupposes that only those can be helped who come forward and demand it, and that the poorest of those who never apply are never in

need of it. Such aid would never do more than keep the dependent from starvation or prevent him from perishing with the cold. Modern practice insists upon a minimum standard of living, below which it lies not within the conscience of society, nor within the purposes of government, its handmaiden, to allow the dependent to fall. A fifth consideration in out-relief therefore should be that

5. *The aid given always should be based upon a thorough analysis of the need. It should be adequate in the sense at least that it meets the minimum requirement to sustain life on a humane level of comfort and respectability.*

There can be no two opinions at this present day as to the failure of the inexperienced, elective overseer as a dispenser of public aid. If able case work is the only genuine check upon the unworthy, it follows that the skilled case worker is necessary to an effective result. The sixth consideration then should be that

6. *Public outdoor relief should be administered through the trained case worker, visiting the applicants in their homes, planning with them the family budget and the steps to be taken to make the bounty of the public a true investment for the community. Where districts are too small to support a full-time paid visitor, contiguous areas should be combined until the unit is large enough to make such employment practicable.*

The problem of poverty and dependency is of one warp and one woof in any community. It is not practicable to say where the duty of one organized effort at relief shall end and where another shall begin. The dividing line must be worked out between them. For the most part, to prevent duplication, or the undoing of results already obtained, they must work their problems out together, and though the private charitable agency is by and large an experimenter while the public relief body is the administrator of a demonstrated system set up by law, nevertheless these groups must work in constant contact and relationship with each other. Only by this means can each understand the problem of dependency with which both deal. A seventh point of emphasis may be stated to be that

7. *There must be constant and intelligent coöperation be-*

*tween public and private relief agencies in treating the local problem of dependency. In particular, the public agency as well as the private society should list every case and make inquiry upon every new applicant in the central index or social service exchange.*

As the relief of dependent families or individuals is such an extra-hazardous occupation in view of the public welfare

8. *The public agency should keep a thorough and intelligent record of each case which will identify the applicant for all purposes of treatment; which outlines the plan pursued; in short, which is of sufficient substance to enable a trained worker, who is a stranger to the case, to prepare himself, by reading it, to take it up and carry it on effectively.*

As circumstances change rapidly in rapidly changing times

9. *All cases should be reviewed as a routine at regular and frequent intervals to ascertain what changes in plans if any need to be made and when relief may be discontinued.*

Finally, a multiplicity of local units in public poor relief produce a multiplicity of varying practices where uniformity in planning and policy should be the rule. Coördinate local districts cannot be depended upon to produce a system consonant with sound public policy. The experience of our American states bears eloquent testimony to this conclusion. The sound principle of organization should be that

10. *Public poor relief should be organized into a system by which the actual administration rests in the local unit of government subject to supervision by the largest unit, the state, involving the power to direct the plan and policy.*

Experience in American city government dictates an eleventh safeguard, namely,

11. *Public outdoor relief in cities should be administered under a board of unpaid citizens, chosen at large by the chief executive of the municipality for relatively long terms, overlapping; their selection to be based upon their high standing in the community and their known ability in public affairs. Such a board should carry full responsibility for the task of relieving the poor; should have power to select their own chairman and their executive officer; should have full veto on all plans and*

*policies of the department; but should administer the actual duty of case work relief through their executive and his staff without interference in administrative details.*

Indoor Relief—If this treatise had been undertaken fifty years ago, the usual and natural course in the foregoing discussion of poor relief would have been to describe indoor care at length, making that the central feature of the system. But to-day the poor farm is only an auxiliary of the process. Nevertheless there are certain considerations relating to intake, care and classification of almshouse inmates which need particular mention.

As previously stated, the almshouse is the central idea of the English poor relief system. Starting with the doctrine of "less eligibility" the English relief officer reasoned that if the applicant for relief was ready to forsake home or wonted haunts, leave every friend, forsake even the locality of his previous daily life and go to a workhouse to pick oakum for a promiscuous bed and board, he could be assumed to be in need. And *per contra* if the individual could ask for and demand alms without these sacrifices or any considerable portion of them, then there was no way by which society, undertaking to relieve the necessitous, could guard itself against fraud and malingering.

Experience in England has amply proved the soundness of that reasoning. If we assumed, as English authorities always have done, that the giving of relief is a passive operation in which the individual demands and the overseer gives, there is no escaping the logic. It is only now, when the new expedient of skilled case work is brought into play, that another and a more humane way out of the dilemma is beginning to appear.

By an Act of Parliament in the 9th of George I, 1723, a parish or union of parishes was empowered to build a workhouse for the purpose of "setting the poor on work," and refusal of residence therein was to bar other relief. This was the first legislation providing workhouses. The idea was to provide a stock of materials and set the public dependents to work. The idea of custodial correction was not included. This lead, if followed up, would have reinstated the house test

contemplated in the Elizabethan law, but the trend of public opinion appears to have been against it, so that out-relief steadily increased and pauperism spread apace. By Gilbert's Act, in 1782, the able-bodied were expressly relieved from forcible entry into the workhouse. Guardians were to find work for able-bodied applicants and to make up out of the rates any deficiency in wages. This act, coupled with the action of the Berkshire justices at Speenhamland, in 1795,[1] subsidizing wages, virtually removed the house test from the poor relief system. What was left of it vanished under East's Act in 1815 which empowered the justices to make money grants to dependents in their own homes.

In America the term workhouse always has meant house of correction. It is inextricably bound up in our law with the punishment of misdemeanors.

It has remained only for the most recent times to set up what truly may be called a house of alms. Throughout all the drab history of "the House" it has been in greatest measure a house of detention, a place where the work test is applied—but a work of unproductive, marketless toil—and in all ages a vat into which the sour ferment of unclassified human wreckage has been cast. As a house of alms; yes. It has ever been the last sorry abiding place for the widow in her old age, she who may have worked her life out in worthy toil, and failing support and friends has had no recourse but the poorhouse. Too often also a house of alms for the orphaned and the deserted child who, having nowhere to turn, has by an undeveloped system of public relief, been herded into the House. Most frequently it has been a house of alms and shelter for the prostitute at her lying-in. Few countries with institutions of this sort but can point to families and tribes born and bred for generations in the workhouse. In earlier days in Massachusetts the in-and-out drab was a common almshouse type. The almshouse she used as a shelter at delivery and as a depository of her child. Leaving as soon as she could walk she went into the hedgerow to conceive another. Reports at the sessions of the National Conference of Social Work through the first forty years of its existence testify eloquently to this pauperizing evil

[1] See p. 155, *ante*.

which fostered illegitimacy and the spread of disease and hereditary mental defect.

But the most common occupant of the earlier almshouses was the drunkard and the able-bodied vagrant. A vast army of tramps, so great as to create a problem to American railroads, costing many millions of dollars in damages and the task of regulation, have for decades used the poor farms and almshouses of our cities and towns as their inns and hospitals. Here they were sure of food and shelter with warmth in winter. Such small chores as were exacted could be tolerated by stretching a point. That picturesque figure of the English countryside in the time of Henry VII, trudging from monastery to hospice, begging, stealing, never working, is the same actor, with hardly a change of costume, as he sprawls near the embers of his campfire along the American railroad grade. In old England on a certain day in 1569 were discovered thirteen thousand of these "masterless men." In 1908, in old Massachusetts 38,318 nights' lodgings were given in the almshouses to perhaps ten thousand of the same ilk. In the same year 5,983 of this gentry were arrested and 1,901 of them sentenced to jail or the State Farm. For two hundred years the poor houses of America have striven to extricate themselves from the deadening and destructive influence of their steady stream of transient guests, yet at this writing more than half of them still legally admit tramps.[2]

Records through every decade of American experience, even to the present time, attest the prevalence of the unclassified almshouse. In 1834, at the moment when the English act reforming the poor law was declaring that each county must have a workhouse from which only idiots and the insane were expressly excluded, the trustees of the Boston House of Industry were reporting that their institution, established thirteen years before to house the able-bodied poor and provide them with employment, contained 61 persons who were either insane or idiotic; 134 who were sick or infirm; 104 boys and girls of school age; 28 children at nurse; and an unclassified remainder among whom were 64 men who worked at picking oakum.

[2] For the History of Vagrancy, see Chapter XVII, *post*.

That is to say, this workhouse for the able-bodied poor had become an unclassified almshouse.

It is needless to multiply illustrations. This roster of the Boston House might stand, word for word, as the census of the first poor house in England under George I or the last of the unclassified county farms in Missouri or Michigan or Arkansas in 1927. The condition is not peculiar to the locality nor symptomatic of the temper of the people. It is native to the dole system of relief. It is only now, in this third decade of the twentieth century, that the poor house as that term has been always understood, is changing beyond a doubt into a home for the aged and infirm. From being the central element in the system, it has become the adjunct, performing a real function for a special class. The old variety of house still obtains and will persist for many a year, tucked away in a fold of the hills where selfish humanity sees it not and suffers no pang of conscience therefor.

In contrast to the almshouse of 1834, an enlightened system of state supervision has made of the almshouses of Massachusetts a group of well-managed homes for aged and infirm dependents, superior in classification to the privately managed Homes of that state. The following extract from the report of the state inspector for 1925 reveals the helpful nature of the supervision now rendered:

"Recommendations made: *New Bedford:* That because of serious overcrowding, a new smoking room be provided. It was further suggested that the present smoking room be retained and used for the use of the aged and infirm. *Mansfield:* That the practice of allowing inmates to smoke in their rooms be discontinued and that a suitable smoking room be provided; that old quilts now used on some of the beds be supplanted by blankets. *Northbridge:* That provision be made for lighting by electricity. It was called to the attention of the Overseers that the towns of North Brookfield and Barnstable had installed electric plants at their almshouses and that the same were proving satisfactory. *Bridgewater:* Renewing a former recommendation, that a new bathroom be installed. Because of the age and infirmities of the inmates, this seems most de-

sirable. *Fitchburg:* That the present hospital rooms be utilized for the care of chronic cases and that a nurse be employed. *Oxford:* Renewing the recommendation of last year, that a boy who is staying at the almshouse be placed in the care of this Department (State Dept. of Public Welfare: Division of Child Guardianship), or that some other suitable provision be made for this case. *Groton:* That the present water system is not satisfactory and that an electric pump and a pneumatic tank should be installed. *Webster:* That a covered passage be constructed between the kitchen and inmates' dining room. *Ipswich:* That decided improvements be made: moving the kitchen and dining room to the floor above, the installation of new bathrooms, electric light and a telephone; or that a suitable house be built or bought for almshouse purposes. *Charlton:* That an infirmary be maintained at the almshouse of the Charlton Association. *Westfield:* That some new beds be provided; that there is a serious need of new floors in certain parts of the almshouse, also suggesting that the board of overseers consider the erection of a new almshouse." [3]

Principles of Poor House Administration—Viewing the almshouse as a permanent feature of the system of public poor relief, the following principles of organization and functioning are offered as reasonable standards deducible from the best modern practice.

As institutional provision is necessary to the process of public assistance to dependent persons,

1. *Every community of moderate size or larger should have an almshouse or, by whatever name, a place devoted to this purpose.*

The more impersonal and devoid of neighborhood contact we make the relief of the poor, the more we weaken the individual's pride of personal independence. It follows that wherever practicable the administration of poor relief should be local. But experience shows equally that poor relief left to the local units fails of wholesome development and fosters differences and bickerings. Meantime the poor are suffering. The answer of experience is careful supervision of all local relief by the largest unit of government, the state.

[3] Annual Report, Department of Public Welfare (Mass.), 1925, p. 113.

2. *The almshouse should be administered by the local unit at local expense, subject to supervision by the state; which supervision should involve thorough and regular inspection with helpful recommendation of plans for improvement.*

The intake of the almshouse should be carefully guarded by classification which sends to specialized care certain classes of persons whose custody or rehabilitation can best be effected through such other channels. These special groups are

(1) The insane (except a few harmless senile cases).
(2) The feeble-minded (except older persons, male and female offering no danger of producing offspring).
(3) The epileptic.
(4) Children, except for very short periods when with the mother.
(5) Most communicable diseases.
(6) Tramps and other able-bodied persons.
(7) Alcoholics and drug users.

As this process would leave little else but the aged and the infirm to almshouse care, the operating principle may be stated thus,

3. *The almshouse should be a home for the aged and the infirm. Other persons, except on the most temporary basis, should be treated elsewhere by means more likely to effect rehabilitation.*

As a home for the aged and the infirm, the almshouse takes on a hospital atmosphere not usual in the unclassified house.

4. *The almshouse should have an infirmary ward, with standard hospital equipment, sufficient to care for the usual run of bed cases. The proportion of hospital beds will run higher as classification becomes more complete. One bed in four is not excessive in communities where special care is reasonably far advanced.*

In the internal management of the almshouse the trend of the times toward an infirmary creates marked changes in the equipment necessary, over and above the development of a hospital. Thus the farm ceases to be useful as a spur to the able-bodied or a support to the budget. The superintendent ceases to be valuable as a jailer or a gang boss and must show

his excellences in patient kindliness and economical insistence upon the little amenities that make the life of the old and crotchety less burdensome to themselves and their neighbors. There is still of course the need of thorough separation of the sexes except for married couples. A list of these points of internal arrangement may be stated as follows:

(1) No more of a farm should be maintained than will provide therapeutic exercise for inmates, provide for waste disposal, and furnish a supply of vegetables and flowers.
(2) There should be thorough separation of the sexes for all but married couples. Such couples should, if beyond child bearing age, be allowed to live together, preferably in small quarters to themselves.
(3) Every inmate, if not bedridden, should have his or her task or other responsibility, however small, to contribute to the running of the home.

## FOR THE STIMULATION OF THOUGHT

1. Due to classification of public dependents and the consequent withdrawal of class after class to special care, the almshouse has been a decreasingly important factor in the system of public poor relief. Will it disappear altogether? What reasons can you think of that point to its permanent retention as a part of the system?

2. What expedient might be used to keep the poor house alive in the consciousness of the public? What plan is followed in Massachusetts? Would this plan work anywhere?

3. Is it practicable to conduct a municipal hospital for acute cases in the same plant with the municipal almshouse? If not, will the fact that the almshouse is tending ever to become an infirmary with increasing hospital facilities mean that the municipality must duplicate the hospital plant? Where this combination exists, objection is sometimes heard on the part of patients who are not public dependents that they are required to be with paupers. Is there any justification for this objection? Is the rule of practice necessarily the same as the ideal desired?

4. Should married couples ever be separated in the almshouse?

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## CHAPTER XIV

# MOTHERS' ASSISTANCE AND OLD AGE PENSIONS

Frequent mention of mothers' assistance has been made in the foregoing pages. This topic is of such importance in the scheme of public poor relief as to call for special consideration. It is less than two decades ago that the idea of providing for children in their own homes, by subsidizing the mother, began to take root. Missouri adopted it for Jackson County in 1911, and Illinois in the same year passed a state-wide measure. From these beginnings the idea spread, helped along by a line of argument then prevalent that a mother by the fact of motherhood was entitled to special consideration from the state, mayhap in the way of a pension. In 1913 eighteen states passed mothers' aid laws. Down to the present, 1927, forty-two states, two territories and the District of Columbia have placed similar enactments upon their books.

In all this legislation there has been little straight thinking as to the fundamental nature of the measure. Twenty states have put the administration in a court with juvenile jurisdiction, thus placing an administrative duty of government in a body created as a tribunal of justice. The incompatibility of function can end only in debasing the credit of the court as such and erecting it into a charitable agency, causing its officers to become in fact overseers of prospective dependents. Only twelve of the forty-five jurisdictions lodge the administrative duty in the hands of poor relief officials.

Mothers' Assistance Is Public Poor Relief—The reasons for this aversion to the usual machinery of poor relief are two: First, a failure to see the true nature of the proposal; and, second, an unwillingness to bring mothers with their dependent little ones under the stigma of pauper aid, dispensed by the disliked and somewhat discredited poor relief official. Nevertheless, the fact remains that mothers' aid is public relief to per-

sons in distress. These mothers are not otherwise able to bring up their children in their own homes, and being, by definition in the law, mothers who are a fit influence for their children, the community, if it lets the impending disruption of the home occur, reduces—if it does not lose—the likelihood of having those children brought to competence as citizens. Therefore the community gives preventive relief. In outward seeming mothers' aid differs from doles paid out to dependents after destitution; but it is of the same basic nature. And as such, its administration logically belongs to the poor relief department.

With the fear of opening the public treasury to a heavy drain, and beset with the notion that this is a pension, most legislatures have set a definite maximum to the amount to be given. This restriction has in most cases defeated the basic purpose of the law, namely, to enable the mother to bring up her children in her own home on a fair standard of home life. In 1926 it would cost at least $1,000 to support a mother and three children in her home for one year. The thirty-five states which set a maximum limit on the amount of aid show a limit below $800. In twenty of these states the maximum would fall below $480.[1] The Federal Children's Bureau estimates that 150,000 children were in receipt of this aid at any one time during 1926.

The greatest service which this new kind of public relief will render the community is to demonstrate the futility of the old style of public doles. Wherever the two systems are administered by the same officers, and to a degree where the administration is divided, the amount of relief given in mothers' aid cases and the case work required in its application are teaching the public how to handle poor relief of all kinds. If the time-honored dole ever can be uprooted from our economy, it will be done by the example of the mothers' aid law.

Fundamental Bases of Application—As to the law itself, the future must reveal more clearly than at present the following bases for its application:

1. *It is a public relief law and not a pension, and as such will in the end be administered by public relief or welfare departments.*

[1] See Publication of U. S. Children's Bureau No. 162, p. 17.

2. *Fixed maxima in the amount of relief must be taken from the statute and discretion left with the department to follow the findings of trained case workers as to the extent of the need and the plan of rehabilitation.*

3. *In common with all other public relief the administration should rest with the local government subject to supervision and leadership by the state.*

Old Age Pensions—A phase of public poor relief which is demanding increasing attention is old age pensions. Its most devoted advocates deny its genus as that of public relief, claiming that it is a social readjustment demanded by rights inherent in the individual. Let the reasoning be what it may, the result must come finally to the axiom that when the individual in society can support himself no longer, and has no legal nor any moral claim upon other individuals therefor, he either must be surrendered out of man's ethical scheme of society into the outer darkness of nature to starve; or else society as such must carry him until such time as he can reëstablish self-support—till he dies, if that moment of self-support never comes.

In the feverish rush of modern industry, a phase of life which affords almost nothing of the old-time habits and customs of life; which takes the worker out of the fresh air and off the soil; which requires him to work in stale air; out of the sunlight; in high temperatures; in cold temperatures; under the excessive air pressure of the caisson; breathing gases of the furnace and foundry; the individual is worn out while he is still young, before his children are able to carry the family load. The incidence of this human wreckage is ever increasing as mechanical perfection in the machinery of production is approached.

What shall society do with these worn-out individuals? Can industry be arranged so that the workman who toils all his days of competence shall not find himself at the end of it still dependent upon his physical or mental strength for the bread he eats? Can a margin somehow be provided which will take care of the days of this man's decline? Is it a debt of society to him? The principle is now generally accepted that society shall support the destitute rather than let them die. It is a principle based upon sympathy rather than reason; neverthe-

less it is a part of the philosophy of civilization. Shall we then let the aged, who because of age are certain to be incapacitated for self-support by work, lapse into the ranks of public dependents, or shall we provide specially for them? That is to say, does society owe them anything over and above the usual understanding that destitution will be relieved?

Old Age Pension a Form of Poor Relief—If we answer that query in the negative, we still have the further question whether separate treatment, in the form of pensions perhaps, would not be expedient, in the interests of the public welfare. But however we answer it, the fact remains that outside of a thrift-encouraging regulation like a contributory plan, the relief of the aged is a process in the support of public dependents, not separable in principle from usual poor relief. Indeed the desire to differentiate arises usually out of no realization of a difference in theory, but rather out of an objection to stigma, caused partly by the shame of charity, and partly by unsympathetic administration. Every law yet passed excludes aged persons who have ample means of support, showing conclusively that the purpose of the act is to support dependent old age.

Old age pensions is a perennial question before the legislatures of the civilized world. Some have answered it in the affirmative and set up systems of relief. In most places it is still an unsolved problem. A brief account of the status of the question at the present time will suffice for the purpose of showing its relationship to the science of public welfare.

All of the important nations of Europe have legislated upon the subject of old age pensions. These with Australia, New Zealand in the East, and Argentina in the South, together with Canada, Alaska and five of the United States make up a grand total of thirty-one jurisdictions recognizing some form of old age pension. Seven countries which have non-contributory pensions are mostly English speaking. They comprise a total population approximating 70,000,000. Fifteen nations require some form of contribution by the pensioner. These have a population totaling some 240,000,000.[2]

[2] For a serviceable discussion of this subject, see The Report of the Mass. Commission on Pensions, 1925, Senate Doc. No. 5.

The first phase of this sort of relief appears to have been an effort to induce the worker to save against his old age. Voluntary insurance first appeared, to be supplemented later by state subsidies. This condition prevailed down to about 1908, when a second phase appeared in the form of compulsory savings. Where Germany, France and Belgium first had instituted voluntary insurance, Italy and Spain developed the compulsory-contributory type. Great Britain and Australia alone adopted the non-contributory plan. This was simple for the English people, long inured to the subsidizing of wages out of the poor rates.

About 1920, in England, a third aspect of the development became apparent in marked increases of the amounts paid under existing laws. This was inspired of course by the great depreciation of currency in the economic debacle following the war. Now are appearing signs of a new phase which involves a recognition of the shortsightedness of such pension schemes and undertakes by some form of social insurance to do more than set up a benefit which operates as a dole in outdoor poor relief.

The Several States—Noting the United States more particularly, the first pension act was passed in 1914 by Arizona. It was a crude declaration abolishing the almshouses and turning the proceeds to a pension fund. This two-fisted proposal was declared unconstitutional. It did not call for contribution from the beneficiary.

In the next year Alaska enacted a provision which it proceeded to amend in 1917, 1919, 1921 and 1923. As the law finally stood, any man of 65 or woman of 60, residing in the territory fifteen years consecutively and entitled to entrance into the Pioneer's Home at Sitka, was entitled to a pension of $25 to $45 a month.

In 1923 Nevada, Montana and Pennsylvania enacted non-contributory old age pension laws, the last, because of the extensive population and the large incidence of old age dependency, being the most noteworthy of all the American attempts. It has now been declared unconstitutional [3] but a constitutional amendment is pending which seeks to reinstate the measure.

[3] Busser *v.* Snyder; 282 Pa. 140; 128 Atlantic Reporter 80.

Wisconsin, legislating in 1925,[4] was the last to come into line. Its enactment authorized county boards by two-thirds vote to establish old age pension systems. Beneficiaries must be at least 70 years of age, residents of the state for fifteen years consecutively and citizens of the United States for that length of time. There were numerous other disqualifications including property exceeding $3,000. Pensions could not exceed $1 per day. The county judge was made the dispensing agency. Counties were to pay the bill and be entitled to claim one-third from the state. The law remains practically inoperative.

One and all, these laws require that the pensioner be in need. Uniformly they hedge their liability about with long terms of residence and with requirements of citizenship. Frequently they insist upon good moral reputation and a fair past record of performance in the matter of supporting dependents. Thus they set up a highly restricted solution to meet a problem which is limited only by the usual characteristics of hunger and privation. An alien stomach will grow empty as fast as that of a citizen. A dissolute old rake, dying from the top down, is just as destitute in his doddering senility as the veteran of constant and honorable toil. The problem is one of relief, and the nub to the endless restriction is, at bottom, that while the public is willing to succor the helpless out of sympathy as a private charity, they are not yet ready to pay out their substance to the improvident and other of the fraternity of the necessitous under some reasoned claim of right. It doesn't go down with the individualistic American people. Meantime the problem should be recognized for just what it is—the riddle of the empty stomach. Experience of decades, yes centuries, with the public poor shows beyond question that the only way to relieve indigence adequately from the point of view of the dependent, and safely from the point of view of Society, is through friendly personal case work, wielding a sympathy tempered always by justice.

[4] Wisconsin Laws, 1925, Ch. 121.

## FOR THE STIMULATION OF THOUGHT

1. In 1915 the State of Massachusetts was paying out some $74,000 in mothers' aid for the single item of life insurance. Such insurance among mothers' aid cases seldom provides anything beyond a portion of the burial expenses. On a basis of a liberal allowance for such expenses the total expense to the State, had it paid the full cost of all burials in 1915 would have fallen below $10,000. The State department therefore required that all policies that could be liquidated without loss should be discontinued. Was this sound policy? Should mothers receiving such assistance be allowed insurance premium money?

2. Considering question 2 under Chapter XII. What should be considered adequate assistance to a mother with dependent children?

3. Read the Illinois, Massachusetts and Pennsylvania mothers' assistance laws. What branch of the government should administer mothers' assistance? Why?

4. Is it not a fact that a large proportion of mankind must toil through the years and come to old age with no savings and no means of support? Is it practicable by some method of insurance to provide a competence for such aged dependents?

5. Are old age pensions, as now administered, anything but a variation of public poor relief?

6. What would be the outcome of a non-contributory old age pension system in the United States, in terms of wages; of public and private homes for the aged; of personal thrift; of taxes?

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## CHAPTER XV

# CARE AND TREATMENT OF LAW BREAKERS

Throughout all stages of society, crime fundamentally, is the transgression of sound custom.[1] In the primitive order such customs are expressed in the form of the taboo. But with the appearance of written statutes we find commandments, warning the subject against the doing of specified acts which are conceived to be against the public interest. In modern times we have elaborate criminal codes and statutes which seek to make definite the rules of sound custom touching the conduct of the individual in the social order.

Government is a civic association set up by Society in its own interest, for the purpose of defining the status of the individual, regulating the exercise of his rights, compelling the performance of his obligations, and otherwise serving the whole. In such a venture it must be apparent that not all individuals would perform these obligations and respect these rights with a perfect score. Now that we learn through psychological research what great disparity exists in the mentality of different individuals—what vast differences there are in the matter of mental capacity to understand and appreciate the rule of custom and the criminal law—we are better able to see that a large incidence of failure to observe the law must always attend the everyday life of our human family.

It is not the purpose of this chapter to enter deeply into the various theories of criminology; nor even to outline in any great detail the history of the criminal law; but rather to produce an historical account of those methods by which civilized communities have sought to protect themselves against law

[1] For the upgrowth of custom as the law of human association, see Sumner's *Folkways*. For an elaboration of the principle that custom is the only true law, see Carter, James C., *Law, Its Origin, Growth and Function*. See also Bishop's *New Criminal Law*, Vol. I, Ch. 1 and § 42.

breakers, dealing especially with their plans for the care, custody and treatment of those persons who have been deprived of their freedom because of their conduct. On this as a basis, it is the purpose to state where feasible the best rule of practice as showing the standards of our time in this branch of public welfare service.

Statistics of Criminals in the United States—Exclusive of military and naval prisoners and all juveniles in special correctional institutions, there were serving time in the United States on January 1, 1923, a total of 109,075 persons, approximately one in every 1,000 of the population, who had been convicted of crime. Less than 5 per cent. were women. These convicts were housed in 3 Federal and 61 State prisons; 38 State reformatories; 1,900 county jails, workhouses, farm and chain gangs; and 339 municipal jails, workhouses, farms, stockades, etc. At the time of this census there were 480 jails reported without inmates and 750 jails and workhouses not reporting. It is not likely that this group of unknowns would increase the total appreciably.[2]

In 1923 more than 350,000 convicted persons were committed to the institutions above mentioned, making more than a third of a million sane adult offenders convicted of crime and placed in institutions in the United States each year at the present rate. One in every twenty of this army of delinquents is a woman.

Three-fourths of this prison population were found in the State and Federal prisons and reformatories, chiefly in the 61 State prisons. Half of the total were found guilty of crimes against property, the two important offenses being burglary and robbery. One-fifth were convicted of crimes against the person, homicide ranging largest. The specific charge of vagrancy was recorded in 2,487 cases and an estimated total of 26,000 persons were committed during the year for this offense. The extent to which wandering is a characteristic of criminals in the United States is indicated by the fact that nearly half of the entire prison population were born in a state

[2] See U. S. Bureau Census, Prisoners, 1923, p. 3. The data contained in this Bulletin are incomplete and therefore unreliable. As to the totals above quoted they appear to be valid.

or district other than that in which they were convicted. The presence of the traveling fraternity in the jails and workhouses is further evidenced by the fact that 46 per cent. of all such commitments were for less than one month. Nearly half of the jail and workhouse population have a record of one or more previous commitments.

In addition to these adults there were 23,000 boys and girls between the ages of 10 and 17 incarcerated in 145 special institutions spread over 46 states and the District of Columbia. This meant a ratio of 155 out of every 100,000 of the population between these ages.[3]

Observing the course of American criminal statistics it is probable that there have been as many as 7,000,000 commitments to servitude in the United States in the past quarter century, and as the ratio of commitments to arrests is about one in every eleven [4] it is necessary to suppose either that the individual American is a chronic offender or else that there is a distinct and clearly definable brotherhood of evildoers, ranging from accidentals to seasoned anti-social fellows who are professors of law breaking.

WHENCE COMES THE CRIMINAL?—Whence comes this army of the irreconcilable in our scheme of Society? Some say from the multiplicity and the intricacy of our laws. Some, viewing the reverse of the same proposition, aver that criminals are the natural product of the feeble-minded, the dull-normal and the psychopathic who are unable to measure up to our standards of citizenship conduct and who, once headed for a career of law breaking, run the course with but little restraint from the rest of us. A school of considerable vogue but now declining with the new light shed by modern psychiatry, discovers such a degree of abnormality of brain and mind in certain individuals as to constitute them a distinct criminal type, predisposed always to break over the boundaries of social restraint. There is a fourth group of critics—the

[3] See U. S. Bureau of the Census—*Children Under Institutional Care*, 1923.

[4] In the single State of Massachusetts with about 4,000,000 inhabitants, there were 1,638,722 adult persons arrested and brought to court in the decade ending with 1925. To these figures must be added 65,636 juvenile delinquents. Obviously the proportion of repeaters must be large.

rank and file of our citizenship—who believe that criminality is just "cussedness."

The social engineer, seeking to construct such a defense system for Society as will protect the public from the depredations of law breakers and at the same time get at the causes of crime, must consult all four of these angles of thought. Our laws are numerous and complicated enough in all conscience. As the population-swarm becomes more and more compact, those liberties which the individual enjoyed hitherto, because of his greater elbow room, have to be given up in order that all may live together with equal opportunity. He may no longer walk down the railroad grade for a short-cut; must not swim in the pond; is forbidden to start a bonfire in the gutter at the front of his own lawn; dare not drive his car with loose brakes, or without lights, two in front and one behind. In a thousand ways his freedom of action is restricted. Everywhere he may turn he faces rights of his neighbors and fellow citizens which he must respect, even as they must respect his. It is obvious that individuals differing so radically in mental capacity must differ greatly in ability to understand and to appreciate the rights of others. The observer who will take the trouble to sit for a few days in the criminal session of an American municipal court will not fail to note that while there are often exceptions, the rank and file of prisoners in the dock are by and large the scrawny members of the human litter, ill-conditioned, dull and listless, or sharp and sly—a miscellaneous crew yet with much in common in character as well as condition among them.

It must be obvious also that those principles of our laws, which hold that ignorance thereof is no excuse, and that every sane person is as responsible as any, the wisest, of his fellow citizens for their observance, cannot apply with equal justice to the highly trained student of law and the dull-normal or the feeble-minded person who has never been declared defective and hence legally irresponsible. When it appears that something like one in every eighty of the population is feeble-minded, there is less reason for wonder that three in every thousand go to jail, or that one in every 35 is arrested for breach of the law. Careful psychiatric examination in prisons and reformatories

throughout the United States indicates that approximately one-third of the inmates found at any one time are markedly feeble-minded; that another third are so abnormal in mentality as to vitiate the supposition that they are fully responsible for their conduct; and that finally, nearly 60 per cent. have records of prior commitment. This telltale evidence points in but the one direction, namely, that there is a distinct brotherhood of crime, even though it is fear of consequences rather than respect for law that keeps the average citizen straight. The new Massachusetts law requiring mental as well as physical examination of all prisoners committed for thirty days or more will provide a body of reliable evidence regarding the relationship between defective mentality and crime.

It is harder to follow the theories of the Continental School of Criminologists. Whether there is such a thing as the criminal ear or the criminal asymmetry of face is open to question. That brindle stock shows such persistent variations among humans as among other animals is reasonably certain. And coupled with the fact that the poorer grades of human stock somehow contrive to wind up in the dock, the assertion that certain criminal stigmata do exist, is plausible if not proved.

The "cussedness" theory has daily exemplification. If the observer will sit down by the campfire of a group of tramps he will notice the mental as well as the physical seediness of his hosts, but he will observe also that this troupe of actors are in their moments of relaxation a pretty fair cross section of the intelligence of their respective countrymen. Like the actor in a stock company, they are mendicant, pious hermit, heavy villain, burglar and sneak thief on occasion and as often as the occasion requires. As far as can be observed they could function just as well at some honest calling. Their only defect seems to be that they are blind on the work side. To them, work is anathema; they cannot abide it. There may be, of course, some highly technical determiner which predisposes to vagrancy, but judged by the fact that work is the great bugbear of a tramp's life, from which he will flee in all weathers—wherefore the community that sets up the work test and enforces it soon rids itself of vagrants—it is reasonably certain that the remedies for ordinary tramping are ready at hand, and

that the ailment will yield quickly to their persistent application.

There is another view of the personal "cussedness" theory. Environmental causes coupled with the irrepressibility of youth are responsible for much if not most of the juvenile delinquency. In the juvenile courts of several Massachusetts cities, the proportion of children who are American born of foreign-born parents is abnormally high, reaching in some instances as high as 95 per cent. The explanation is that these ordinary boys and girls, born into the despotic family life of the South European, but faced by our compulsory school laws to attend school away from home and to learn the English language, return to the roof tree to find their parents unable even to understand their conversation. This sudden emancipation is too much for them; hence they are apt to become delinquents.

In many other ways the tendency of normal persons to become law breakers could be cited. But large as this group is in the annals of crime, they fail to explain that hardy band of professionals who live in an anti-social atmosphere as much like a cult as any communal philosophy yet evolved. These are the professional criminals who spend their normal lives in prison and their sprees outside.

How shall Society protect itself against the depredations of these persons? A short review of the history of vagrancy, which has been in all ages the background of crime, will outline to some extent the upgrowth of practices in the suppression of crime, and show at the same time some of the first causes which lie behind the system of jails and workhouses in the United States.

Vagrancy, the Historic Background of Crime—History contains no chapter more picturesque and less flattering to the sovereign power of government than the annals of vagrancy. Across the vista of a thousand years, trudging his vagabond way from town to town, over hill, through dale, upon every highway, wherever man has his abiding place, this forlorn figure of humanity may be seen, with pikestaff and clackdish claiming alms of the thrifty to sustain himself without work. Through all ages he is the curse of empires; for though his ranks are recruited largely from the dullard and the wit-

less, they contain also the crafty, and number among their lot the thief, the highwayman and criminals of every complexion and shade of guilt.

VAGRANCY IN ENGLAND—We first hear of him in England about 368 A.D., when the Picts were reported by Ammianus Marcellinus, the Roman historian, to be roving over the country committing ravages. Until the coming of the Saxons, however, there is scant record. In these earliest times there were neither inns nor workhouses to entertain the vagrant. Such monasteries as existed were far apart. Hence there were but two sources of support open to the tramp—private alms and plunder.

By 675 we find Hlothaere, King of Kent, issuing a decree that "if a man entertain a stranger for three nights at his own home, a chapman, or any other that has come over the march (from beyond the tribal border) and then feed him with his own food, and he then do harm to any man, let the man bring the other to justice, or do justice for him." A chapman was the itinerant shopkeeper of those times. He had it in his power to encourage vagrancy in two ways—by receiving and disposing of the plunder taken by vagrants, and by taking the vagrants themselves into his retinue.

Very soon there appeared on the scene, the wandering monk. By the time of Wihtraed (690 to 725) the numbers of these mendicants called for repressive measures. For two centuries longer the number of bondmen discarded upon the highway, or fugitives from their masters helped to swell the ranks of mendicancy. Meanwhile the church expressly commanded alms to the poor. Æthelstan, founder of hospices (924-940) decreed "respecting those lordless men of whom no law can be got, that the kindred be commanded that they domicile him to folk-right (customary law), and find him a lord in the folk-mote; and if they then will not or cannot produce him at the term, then be he henceforth a 'flyma' (vagabond), and let him slay him for a thief who can come at him: and whoever after that shall harbour him, let him pay for him according to his wer, or by it clear himself."

The law against harboring strangers grows much more elaborate by the reign of Edward the Confessor (1042-1066) due

to the growing practice among influential landowners of harboring wandering criminals to make up their own robber bands.

The year 1348 brought the black death to England, killing from one-third to one-half of all the inhabitants. After this scourge wages rose to an exorbitant level. Workmen wandering upon the highways to sell their labor served greatly to swell the ranks of vagrancy; so that in 1349 was passed the statute of laborers, aimed to curb their wandering and to suppress vagrancy. This enactment begins a long series of measures aimed at suppressing vagabondage, all destined to failure chiefly because the church commanded alms and provided so largely for the wants of mendicants. In the words of Langland, author of the "Vision of Piers Plowman," these beggars are described as "having no other church than the brewhouse unless they be blind, or ruptured, or sick, begging about the country at other men's buttery hatches or loitering on Fridays and festivals in churches, which is the loller's way of life, filling their bags and stomachs by lies, sitting at night over a hot fire, where they untie their legs, which have been bound up in the day time, and lying at ease, roasting themselves over the coals, and turning their backs to the heat, drinking gallantly and deep, after which they then draw to bed, and rise when they are in the humor. Then they roam abroad and keep a sharp lookout where they may soonest get a breakfast, or a rasher of bacon, money, or victuals, and sometimes both, a loaf, or half a loaf, or a thick piece of cheese, which they carry to their own cabin, and contrive to live in idleness and ease, by the labours of other men." After the lapse of 600 years this is almost an exact picture of any tramp camp along any mid-west railroad line in America.

Begging became a fine art in England. The religious orders practiced it. Students at the universities followed it with the permission of their chancellors. The government licensed it, seeking thereby to differentiate between the worthy poor and the sturdy beggar. Punishment consisted of the stocks, whipping, branding, the wearing of a placard and flogging from town to town. Though runaway slaves had been visited with death for the third offense, there appears to be no ground for thinking that ordinary beggars so suffered.

A statute of Edward VI recited that "idlenes and vagabundege is the mother and roote of all theftes robberyes and all evill actes and other mischiefs and the multitude of people given thereto hath allwaies been here within this Realme verie greate and more in nombre as it maye appere then in other regions." This act provided that any person offering service and labor to a vagrant might present him to two justices of the peace, who "shall imediatelye cawse the saide loyterer to be marked with an whott iron in the brest the mark of V and adjudge the saide parsone living so idelye to such presentor to be his slave, to have and to holde the said slave to him his executors or assignes for the soace of twoo yeres then next following." [5]

But whether the fact that a tramp's stomach is as large as that of the willing laborer, while his capacity for work is infinitely smaller, discouraged complainants; or whether the severity of the punishment encouraged householders to follow the line of least resistance enjoined by the church and give alms to all supplicants; the fact remained that there were few enslavements. Vagrancy continued to spread. Each succeeding reign recorded unsparing epithets in lengthy preambles attesting the prevalence of the scourge. But little could be done by civil authority so long as the best friend of the vagabond remained the all-powerful church. Though many sources of pauperism were stopped up by the suppression of the religious houses under Henry VIII, the apparent effect was to increase vagrancy by driving the beneficiaries of the monasteries and hospices upon the highway to live altogether by begging and plunder. A total of 186 greater and 374 lesser monasteries, together with 48 establishments of the Knights Templars, were closed. It has been estimated that at the moment of suppression these institutions contained some fifty thousand inmates who led an idle life.[6]

In 1572, when Parliament enacted the first comprehensive poor law, creating overseers of the poor, and setting up the mechanism for a system of public poor relief, provisions against

[5] I Edw. VI, Ch. III, 1547.

[6] See *History of Vagrants and Vagrancy*, by C. J. Ribton-Turner (London, Chapman & Hall), p. 85.

beggary were included, the philosophy of the act being a differentiation between vagabonds and the worthy poor. Most important of all, houses of correction were established to house vagrants. This act recited that persons above the age of fourteen "being roges, vacobonds, or sturdy beggers," were to be committed to jail. Rogues and vagabonds upon conviction were "to bee grevouslye whipped and burnte through the gristle of the right eare with a hot iron of the compasse of an inch about." Beggars offending a second time were to be deemed felons, and for a third offense were to suffer as felons without benefit of clergy.

Methods of Treatment—The method of treatment of vagabonds once lodged in the house of correction under the Elizabethan acts is well described in the Harleian MSS. (British Museum No. 364):[7] "Orders, Rules, and Directions, concluded, appointed, and agreed uppon by us the Justices of the Peace—for the punishinge and suppressinge of roags, vacabonds; idle, loyteringe, and lewde persons; which doe or shall hereafter wander and goe aboute, within the hundreths—contrary to the lawes in that case made and provided—

"Item,—that the justices dwellinge in every severall division aforesaid, shall name—one able and honest man for every of the hundreths and lymitts aforesaid—who shall be named the forren officer of the house of correction; and those men—shall onely employe the most parte of their travells in goinge or rydinge from towne to towne, and to all faiers, marketts, and other places of meetings and assemblies, from tyme to tyme, within their severall lymitts to which it is likely that any of the persons aforenamed shall resorte; as also to make diligente search within every place of the limitts appointed unto hym, whether any such person be dwellinge, remayninge or wandering there; and that all such person or persons which eyther by serch, inquirie, or other intelligence, shal be founde owte, shall be attached, and either by himself or some constable of that place, carried before one of her majestie's justices dwellinge in these limitts, to be by hym committed to the gayle or house of correction, as cause shall require.

"Item,—that every stronge or sturdie roag, at his or her

[7] Ribton-Turner, p. 116.

fyrst enterance into the said house, shall have xij stripes uppon his beare skynne with the said whipp provided for the said house; and every yong roage, or idle loyterer, vj stripes with the said whipp in forme aforesaid. And that every one of them, without fayle, at their first comminge into the said house, shall have putt uppon hym, her, or them, some clogge, cheine, collers of iron, ringle, or manacle, such as the keper of the said house shall thinke meete, so as he maie answere for every one, as well for his forth comminge; as also that they shall be quiett, and doe noe hurte for the time they shall contynue in the said house."

The poor law took its stable form in 1601 (43 Eliz. c. 2). It definitely set up the workhouse test to determine the worthiness of the poor. This at least helped to identify the vagabonds as a problem apart from genuine distress. But the nuisance was scarcely abated if at all. By the first year of James I it was sought to banish them from the Realm but this too seems not to have reduced the number appreciably.

In 1609 orders were taken in council by which vagabonds (who were stated to swarm in every street) were to be imprisoned for the first offense; branded for the second; and hanged for the third.

The History of Vagrancy the History of Crime—For a full century, while poor relief was gradually assuming the proportions of a redistribution of the community's wealth to the poor without classification and with little or no separation of the wandering from the worthy poor, the ranks of vagabondage grew, recruiting always unto themselves the entire fraternity of crime. Here was the rallying point of anti-social forces, the murderer, the soldier of fortune, the ne'er-do-weel, the prostitute and the harmless dolt who would not or could not work, yet who must nevertheless be fed. The history of vagrancy in England is at the same time substantially her history of crime. If each of England's wars impressed hordes of vagrants into service, doubtless the disbanding of her armies after every war threw new and augmented hosts of mendicants upon her highways.

In 1815, following the war with France, it was estimated that there were 15,288 beggars in London. Less than half of

these had settlements. Of this whole number 9,288 were children. A committee of the House of Commons subsequently reported in the same year an estimate after making an examination, which placed the total of mendicants in the city at 30,000.

Thus England had tried jail, the stocks, the whipping post; branding with a V upon the breast; and the milder remedy of conveyance to the next parish or to the place of inhabitancy. She had made slaves of vagabonds and finally resorted to cutting off of ears and then hanging. But the total of the fraternity of able-bodied beggars mounted steadily. A commission reporting in 1821 found that in the single County of Middlesex the business of passing on had risen from 540 tramps in 1807 to 6,689 in 1819, and totaled 33,905 for the intervening period. A regular contractor was employed for the removal of vagrants to the border of the county. He kept four receiving houses, and engaged seven horses, four men and a boy, three carts and two covered vans in his business. The total estimated cost to that county in 1820 for the apprehension, feeding and transportation of the arrested vagrants alone was £20,409. From 1814 to 1820, both inclusive, 39,413 vagrants were passed from Liverpool to Ireland, their place of habitancy.

The inevitable repressive legislation followed these disclosures but conditions were not improved. Shipments of Irish vagrants under passes from Liverpool in the period from 1824 to 1831 inclusive totaled 38,969. From Bristol between 1823 and 1831 inclusive, 13,586. Almost all of the Bristol deportations came from the City of London. When the commission of 1834 made its report resulting in the comprehensive reform of that year in the Poor Law, they expressed it as their opinion that vagrancy had "actually been converted into a trade, and that not an unprofitable one." Commitments of vagrants to jail jumped from 7,092 in 1825 to 15,624 in 1832. A significant tabulation of the Poor Law Commission in their report for 1839 shows a total of 1,295 vagrants apprehended in London, of whom all but 20 were persons known to have committed offenses against the law and were habitual violators. The proportion is significant as showing how little the problem of

vagrancy rightly touches the field of poor relief—though it is administered there—and how vitally it is connected with the problem of the law breaker and his treatment. In the words of the Commission, "The most prominent body of delinquents in the rural districts are vagrants, and these vagrants appear to consist of two classes: first, the habitual depredators, housebreakers, horse-stealers, and common thieves; secondly, vagrants, properly so called, who seek alms as mendicants."

Through all the drab history of this motley army of the ill-conditioned, asocially-minded fringe of society, runs the tragic cry of unprotected childhood. A vast number of the sturdy beggars of all nations are children. Offspring of the sore-eyed, foul-mouthed prostitute, abandoned progeny of the chronic drunkard, spawn and relict of the convicted felon, these law breakers in prospect quickly become criminals in fact. As females they become useful for sex purposes; as males they are agile and artful agents of the Fagins who make a business of other men's crimes. In 1854, upon the occasion of introducing into Parliament a measure for rendering reformatories and industrial schools more available for vagrant children in Scotland, it was estimated that there were in the Kingdom about 50,000 children who would be affected by the measure. The testimony of wardens and masters of casual wards before the English Poor Law Commission indicates that the average age of the English vagrant in 1864 was 30 years, and that there were about as many under 20 as there were of those over 40.[8]

In 1877 the Charity Organization Society of London uncovered a system emanating from the Neapolitan districts of Italy whereby a padrone obtained children from their parents under a two-year contract at a fixed sum, walked them through France singing, dancing and playing on the streets and brought them eventually to depots in London from which they were sent out in twos and threes to entertain and beg. Their "earnings" were of course taken by the padrone.

In 1868 there were 5,648 tramps' lodging houses in England in addition to the casual wards attached to almost all of the

[8] See Ribton-Turner, p. 297.

600 workhouses. In these establishments on the night of April 1 of that year 36,179 vagrants were lodged.

In Other Countries—What has been said of England is equally true of Scotland. In March, 1875, the total number of vagrants north of the Tweed was 40,817. On March 15, 1885, after a 10-year lapse, this total had grown to 91,567, of which 10,840 were children. This figure probably contained a good many duplications.

A perusal of the savage laws of Ireland shows how great was the curse of vagabondage there also. A fair sample is the V Edw. IV, c. 2, known as the "Head Act" which declared it lawful to take, kill, and decapitate thieves. The head was to be carried to the portreeve of the Town of Trim, who was bound to set it on a stake or spear upon the castle. The bringer was authorized to distrain and levy by his own hands, in the barony where the thief had been taken, two pence from every plow land, and from every man having a house or goods to the value of forty shillings one penny; and one halfpenny from every other cottier having house and smoke. While Ireland denied public out-relief, using the House as a place in which to support her poor, she allowed vagrants to beg through villages and countryside, taking by private benefaction what was denied out of the poor rates. In one week, during 1885, 3,802 vagrants were lodged in Irish casual wards. Of these 559 were children under 15. At the same time the Irish formed the principal group in the poorhouses of London. Thus at Marylebone, out of 1,540 inmates, 17⅓ per cent. were of Irish birth and about the same percentage were of Irish descent.

The continent was of one piece with the British Isles in the matter of the able-bodied who would not work and who made up the fraternity of law breakers. In France between the years 1875 and 1884 inclusive 78,700 persons were apprehended for begging and 120,142 for vagrancy. Of the combined figure, 6,148 were under 16 and 29,382 were under 21. In Germany in 1879, 108,911 persons were punished in Bavaria alone under the vagrancy laws. In Saxony in 1880 the total was 14,066, the minors among these numbering 2,636. In Prussia the number of inmates detained in the houses of correction rose from 4,534 in 1874 to 15,721 in 1881. It was roughly cal-

culated that by 1886 the average yearly grist of punishments for vagrancy stood at about 200,000. It has been further asserted by German public authorities that 100,000 of these belong to the inveterate and irreclaimable vagabond class.[9]

With this brief glimpse at the raw stock of Old World criminals, what may be expected of the new America, where food and work abound; so that no man need starve if he is able to labor? The record is equally disheartening. Over and above the siphonage from Europe, which the governments of the Old World have done their best to encourage, we find vagrancy rife in the United States. It appears to be independent of local economic conditions in its origin, and responds to such local change only in its fluctuations up and down. Always it is more affected by the state of public poor relief and the degree of repressive measures imposed by government than by the state of the labor market or the high cost of living. It appears to be a concomitant of Society arising out of the fact of human association. In this aspect its causes lie deeper than the ephemeral fluctuations of local industry. Hidden in this fact lies the key to that philosophy of the criminologist which finds the law breaker a type peculiar to himself, not amenable to laws and customs.

Vagrancy in the United States—The American railroads for a complete network of transportation, the American housewife for generosity, and the American spirit of live-and-let-live as a safeguard against public indignation, represent the setting in which vagrancy has mounted year by year in the United States. It is estimated that by 1910 there were close to half a million tramps infesting the railroads of this country. Between 1901 and 1905 vagrants are estimated to have formed from one-half to three-fourths of the 49,200 persons killed or injured on our railroads. In 1911 the state authorities of New York reported that the care of tramps and vagrants in the penitentiaries, jails and workhouses of that state was costing approximately $2,000,000 each year. In 1895 the cities and towns of Massachusetts supplied 304,244 nights' lodgings to tramps.

[9] See Ribton-Turner, p. 540.

So long as the wayfarer could use the system of public poor relief administered by cities and villages, he was reasonably safe from concerted attack upon his manner of living. Such public treatment of the problem as had been accorded served only to encourage the evil since little in the way of a work test was enforced and the honest laborer out of work was practically forced into the ranks of mendicancy for lack of any classification which could differentiate him from his imitators.

By 1902 the seven important cities of New York, Chicago, Boston, Washington, Cincinnati, Providence and Springfield, Mass., had wayfarers' lodges or lodging houses under municipal control. Elsewhere this essential unit in remedial treatment was carried on by private agencies. Of these sixteen were rendering important service. But so long as the effort was dissipated in the hands of a multitude of small jurisdictions, the vagrant was affected little if at all adversely. Indeed he was provided with more sanitary housing without much of an increase in the requirement of work.

It was not until the problem was attacked from the standpoint of the state, with a coöperating plan between the activities of different states in matters of transportation that the evil began to show some improvement. The most noteworthy of these state plans is that of Massachusetts, the first stamping ground of the Irish and British tramp and long a sufferer from the ne'er-do-weel.

In 1905 that state passed a law removing the care of tramps and vagrants from the almshouses and other relief units except in separate quarters under regulations laid down by the State Department of Health.[10] Mendicancy was forbidden by an earlier law known as the Pipers and Fiddlers Act. A state farm colony was used as a place of commitment under a two-year maximum indeterminate sentence for all vagrants and one year for inebriates. Under this state system, Boston established a municipal wayfarers' lodge in which a vagrant might stay for a limited time, and in which he was subject to strictly sanitary regulation, and was required to saw wood for his entertainment. The peak conditions of 1895 were not greatly

[10] Mass. Acts, 1905, Ch. 344. See also Acts, 1904, Ch. 274.

improved until the tramp was forbidden the almshouse. In 1905 the cities and towns of Massachusetts supplied 44,003 nights' lodgings to tramps. In 1906 this number dropped to 26,224. But in 1907 it went up again to 38,318. In 1910, when vagrancy was rife throughout the country, the total in Massachusetts was 32,300. Compared with 1895 the change affords eloquent tribute to the virtues of a common buck saw.

In modern life, so largely urbanized, the vagrant is less easily recognized. He is less of the tomato can wanderer and more the hanger-on about the pool room, theater and dive. He is frequently a peddler of small wares when the need of food presses him. He appears at the municipal lodging house, not dusty and travel stained from cross-country jaunting, but rather dirty and gutter soiled from drifting about the purlieus of the city. He frequently professes an address and a permanent abode or place of business; but when the truth is wrung from him he is found to be the same work-shy and brazen type of drifter; friend of the criminal dock; living by his wits or by the schemes of other men. He is a bird of like feather with many thousands of his kind. They are the vagrants of modern society.

Vagrancy has been thus dwelt upon because outside of prison it is the one substantial rendezvous of the criminal class. In its ranks are burglars, cracksmen, highway robbers and sneak thieves of the show day and county fair type. The professional mendicant is always a good actor. Among his fraternity he is strong in friendly backing when need comes. He can disappear with facility if hard pressed, and he can take his periods of ease wholly at the expense of Society. In his character part as vagrant he should be kept in the mind's eye when considering those steps by which Society has sought to repress crime and latterly to reform criminals.

## FOR THE STIMULATION OF THOUGHT

1. Identify as many as possible of the offenders convicted in your home community and catalogue what you know of the predisposing causes of their wrongdoing. Do you agree with what the author says in this chapter about willful wrongdoing by mentally normal persons?

2. Will vagrancy in the United States tend to increase or decrease with the steady urbanization of our population? Why?

3. Considering the number of serious crimes committed by boys in their teens or early twenties, is it still true that vagrancy is the background of crime? How much has drunkenness and the influence of liquor to do with crime?

4. More statutes make more crimes. Find the half truth in this statement and rephrase it to show the bearing of increase in the number of offenses upon the statistics of crime.

## FOR FURTHER READING

Anderson, Nels: *The Hobo.*
Black, Joel: *You Can't Win.*
Carter, James C.: *Law, Its Origin, Growth and Function.*
Dawson, W. H.: *The Vagrancy Problem.*
Ribton-Turner, C. J.: *History of Vagrants and Vagrancy.*
Willard, J. F.: *Tramping with Tramps.*

## CHAPTER XVI

## GOVERNMENT AND THE CRIMINAL

In the attitude of Society toward the offender against custom and statutory rule, there are four aspects or phases which serve as a convenient classification under which to trace the thread of development. They are, *vengeance,* in which private retribution was called for; *repression,* in which cruel punishment was inflicted by the community; *attempted reformation* of the offender, in which his return to respectability and self-support was the chief concern; and finally, *prevention,* in which constructive planning of a defense system for Society against conditions which make for crime is the chief aim. From beginning to end these phases betray a gradual awakening of the human community to itself as an entity. In the first stage it established rule only to keep the peace by preventing private war. Then it commanded the individual to desist from anti-social acts and visited him with punishment, usually death. This treatment proving ineffectual to suppress brigandage, the punishment was lightened and the offender was incarcerated. As this process grew into a voluminous prison system, the need for reformation became apparent. The present stage of desired prevention is but the logical conclusion from this line of evolutionary thinking.

The Age of Private Vengeance—In early community growth we find the individual largely a law unto himself. If injured he might retaliate and the stronger combatant was always right. Gradually the sovereign interfered in the interests of peace. The first important variation of the *lex talionis* was the idea of composition. Whoso injured another might compound his wrong by a payment of value. Gradually the state defined the terms upon which guilt should be established and the amount of damage assessed. As soon as the state took the regulation of personal wrongs into its own hands, it had laid the foundation of a true criminal jurisprudence. Whereas the contending parties were the principals in the beginning, the

state took the place of the injured complainant and declared such injuries to be wrongs against the welfare of the whole people.

The Epoch of Repression—Having arrived at this stage of growth, the state now cast about for means of suppressing wrongs or crimes. So deeply steeped were the minds of men in the idea of an eye for an eye, that it was natural that severe punishments should be the favorite preventive. Death was almost the universal penalty. Indeed it was not until 1840 that death for theft, even of small sums, was abolished in England. Church and state for centuries visited comparatively mild offenses with death. As a general statement there was small demand for a place for the commitment of offenders. They were summarily dispatched. Such prisons as existed at that early day were no more than places where accused persons awaited trial and condemned persons awaited execution. But they soon became places for the torturing of the accused. As the church taught aversion to bloodshed it became adept at torture, by which this fatal consideration of the spilling of blood was happily avoided and the victim visited with punishment more terrible than death. The history of torture in the Middle Ages and the early centuries of our modern times is the blackest record in human experience. The ancient Egyptians were but amateurs, the Romans novices, and the orientals weakly humane in comparison with the medieval church in that long series of burnings and mutilations, of starvations and corrosions which culminated in the Inquisition. It exhibited the $n^{th}$ power of despotism.

But the world one fine day revolted against despotism. The French and American Revolutions were the physical symptoms of a new phase of world thinking. It is not an accident therefore that a voice arose in the person of Cesare Beccaria in Italy who inveighed against death and torture in punishment. Almost immediately John Howard in England pointed out the feasibility of using the prison sentence itself as a mode of punishment. Singularly enough it had not been so looked upon before his day. Howard's notion that it might be utilized also to effect the reformation of the wrongdoer was nothing short of revolutionary.

Banishment—Clearly the trend of thought was against cruelty in punishment. But if criminals were not to be executed they must be disposed of in some other way. The idea of establishing vast corrals or prisons seems not to have appealed to the thinkers of those times. The English answer was banishment. Her American colonies were an eligible wilderness in which to deposit offenders with orders never to return. For a considerable period upwards of 500 convicts were shipped to Maryland each year. Many more were sent to Virginia. When the American Revolution freed the colonies from legal obligation to receive English convicts, the number of persons sentenced to punishment other than death accumulated at such a rate in England as to create a serious problem of disposition. The surplus was confined in old hulks. An effort was made to establish a penal colony at Sierra Leone, but due to the unfavorable climate this experiment had to be abandoned.

Penal Colonies—About this time, Captain Cook returned from his third voyage and reported the discovery of "New Holland." This new continent is the Australia of to-day. In 1787 England took possession of Australia and established a colony at Port Jackson. In the succeeding twenty years she transported 16,265 persons to this new land. The process was kept up until 1840 and for some years later in the form of "probation" rather than commitment to penal servitude. It was finally abandoned under pressure from the free settlers of Australia, who objected to the dumping of English scum. The abandonment of the system was due in a measure also to the fact that English authorities were desirous of copying the American methods of prison care.

France in 1791 made a gesture to establish a penal colony in Madagascar but this came to nothing. In 1851 the idea of a penal colony was revived and Guiana chosen. In 1864 new Caledonia, an island in the South Pacific about 700 miles east of Australia, was added as a second colony. Guiana was abandoned in 1867 as a place for European convicts because of the unfavorable climate.

Russian exile to Siberia has become the typical expression of banishment in modern thought. In 1762 any person owning a

serf was authorized to turn him over to the authorities for banishment to Siberia if he had reason for so doing. In 1763 the death penalty was abolished and transportation to Siberia set up in its stead. Russia looked upon this plan not so much as a punishment as a means of populating a desolate territory, rich in minerals. Down to very recent times the number of transports reached 15,000 to 18,000 per year.

Evolution of the Prison System—Though places for the incarceration of captives and criminals date from remote times, the development of what may be styled a prison system did not begin in earnest until the widespread establishment of houses of correction, chiefly for vagrants, at the end of the sixteenth century, and of workhouses for the employment of the able-bodied poor under the poor laws of Elizabeth (1601). London had a house of correction as early as 1557, but it was not until 1700 that the modern prison system can be said to be a reality, based upon a century and a half of house of correction and of workhouse experience.

Prisons of the earliest type had been places of torture. Prisons of the later kind sought the reformation of the prisoner. If mere single example were all that was needed for the beginning of a new régime in penology, the architecture and the plan of administration of the prison of Ghent, established in 1773, would have been enough. To be sure, English prisons had departed somewhat from the ancient torture chambers and dungeons of slow death of earlier times: yet when John Howard in 1774 visited them he found them foul sinks of human depravity, rotten with filth, pestilential with jail fever and devoid of any aspect of reform. In comparison, the institution at Ghent would rate as a present-day reformatory. It is to that structure that we are to look for the design of most of our prisons of to-day.

Ghent. The prison of Ghent was designed and administered as a workhouse and was meant as an answer to the problem of dealing with the horde of vagrants and criminals who overran Flanders toward the end of the eighteenth century. It was designed in the form of an octagon with a central court from which radiated eight wings in each of which the cells ranged on the outside walls surrounding a trapezoidal court.

In this prison trade instruction was introduced as a means of preparing the outgoing convict for work after release. Prisoners were allowed a percentage of their own wages as an encouragement. A part of their earnings they might spend in the prison; the remainder was saved and given to them upon their discharge. Prisoners occupied individual cells at night but occupied workshops in common during the day and ate at a common table. A resident physician and resident chaplain were also a part of its up-to-date equipment. Women occupied separate quarters. Felons were separated from misdemeanants and vagabonds. Vilian, the designer and great master of Ghent Prison, objected to life sentences as tending to produce hopelessness and despair. On the other hand, he was opposed to short sentences as insufficient for the teaching of trades which were necessary to reformation. He further asserted that as pardon was a royal prerogative the master of the prison should be allowed to recommend convicts for pardon. This was almost a prophetic prevision of the indeterminate sentence of the present day. It is to Ghent therefore that we look as the birthplace of modern prison administration.

With Ghent in mind as a model, attention should be directed next upon the New World, and to the City of Philadelphia, inhabited in that day largely by Quakers, the friends of mankind, lovers of peace. When William Penn framed his criminal code he abolished the death penalty for more than a hundred offenses and limited capital punishment to the crime of willful murder. His followers as early as 1776 organized the Philadelphia Society for Relieving Distressed Prisoners, first of our modern prison associations. Under the influence of this activity the State of Pennsylvania directed the building of a cell block in the middle of the Walnut Street Jail, in such wise that the more hardened prisoners should be kept in complete isolation both day and night. No provision was made for employment.

The Beginning of Prison Reform in the United States—Bad as this condition must have been, it was the true beginning of prison reform in America. If the student doubts the amelioration of conditions as they existed in our prisons before the dawn of the Philadelphia system, he should study

the condition, for example, of the Connecticut State Prison, which between the years 1774 and 1827 was located in an abandoned copper mine. Prisoners at night were shackled with iron bars at their feet and chains about their necks fastened to a great beam overhead. During a part of this same period, at least, the cells in the Maine State Prison were built in the form of pits, entered through a grating overhead.[1]

In 1816 the State of New York established at Auburn a prison in which the inmates were to be separated at night, only the day being spent in large workshops together, but under a rigid rule of complete silence. This system of solitary at night with joint labor in silence during the day is the characteristic synonymous in modern penology with the term "The Auburn System." In 1819 a wing was added to the Auburn structure after the model of the Walnut Street Jail, but the plan of solitary without work was given up in 1823 because of the deadly effect upon the prisoners.

In 1827 Pennsylvania constructed two prisons, one at Pittsburgh and one at Philadelphia. The western institution was circular in form. That at Philadelphia was octagonal after the pattern of Ghent, though with a slightly different arrangement of the cell block. Complete solitary was provided and at first no arrangement for work. But in 1829 the legislature prescribed employment for all prisoners.

A long and bitter contention was waged between these two methods of prison administration; the Auburn system finally securing the favor of public approval in the United States, chiefly because of the practical difficulties in the way of providing labor for prisoners kept in isolation. As soon as power factory equipment was readily available, the use of hand processes in cells showed at a great disadvantage.

Europe Adopted American Ideas—Meantime American progress in prison development was closely observed by European countries. Belgium adopted the Pennsylvania system in 1838; Sweden in 1840; Denmark in 1846; and Norway and Holland in 1851. France introduced it into her departmental prisons in 1875. The European, long accustomed to individual

[1] See *Punishment and Reformation,* by F. H. Wines. N. Y. T. Y. Crowell & Co., 1895, p. 147.

hand labor, thought less of production and more of the greater ease with which the complete isolation system can be administered. In that method the factors entering into the problem of discipline are ranged into two groups, namely, the prisoner on the one side and the entire resource of the prison on the other. Being out of communication with other inmates—or as nearly so as prison arrangement can make him—it is as though there were but one inmate, upon whom the entire strength of the institution can at all times be brought to bear for safe keeping and reformative influence. The Quakers had an idea that the convict, alone with his thoughts, would in time commune with his God, and so by a gradual process reform his will and his conduct. The fallacy of this conception lay perhaps in the social fact that citizenship values can neither be discovered nor rebuilt in the unnatural setting of solitary confinement, removed from the world in a living death. To the horror of the gentle Quaker be it said that the hardened convict in solitary communes not with God but with the devil, who teaches him bitter refinements upon the art of being an enemy of Society.

But such reasoning would not have suited the philosophy of the times, regardless of the method of incarceration. So near were the reasoners of the eighteenth century to the torture dungeons which still existed and were to some extent used; so accustomed were they to the notion that crime was also a sin, a notion arising naturally out of the identity of the church and the state; that punishments by the civil authorities were still like unto the punishments of God. The ecclesiastical aspect of crime and punishment still stood in the way of any very clear vision of the civil state and the need of salvaging the wrongdoer for future self-support and clean conduct wherever possible. Men were incarcerated to punish them for their sins, and not primarily to protect Society from harm. That they were not promptly dispatched by the hangman's rope or the headman's ax was the merest concession to world rebellion against cruelty.

If this reasoning is correct, it would take a considerable lapse of time and a gradual development of democratic ideas in the world before any further great step in the concepts of penology

could be expected. It was in fact more than half a century.

Beginnings of a Rational System of Prison Discipline. Era of Reformation—About 1840, when the English penal colony in Australia was about to close its history, one Captain Maconochie, in charge of the convicts on Norfolk Island, the Port Jackson Colony, introduced the so-called mark system. Each sentence was reckoned the equivalent of a certain number of marks or credits which the prisoner must earn by good conduct in order to obtain his release. His work was paid for in marks. This plan did away with fixed time periods and made the length of servitude dependent completely upon conduct. It is the first glimmer of real intelligence in the treatment of offenders.

Sir Walter Crofton, director of Irish convict prisons at this period, adapted the plan to his institutions and brought it thus to the attention of Europe and America. The leaders of thought among prison administrators and penologists in the United States soon became partisans of the Maconochie or Crofton System. Wines and Dwight of New York, Sanborn of Massachusetts, and Brockway of Detroit were its able exponents, who through the medium of the newly created National Prison Association (1870) secured for its merits a hearing before the bar of American public opinion. In 1869 the Legislature of New York had authorized the development of a new state prison, in which the commission proposed an indeterminate sentence with set maximum for all terms up to five years. In 1870 Mr. Brockway presented to the first session of the National Prison Association a plan for a state prison system in which he advocated the indeterminate sentence. Other speakers advocated modification of present methods and in particular the introduction of the Irish mark system.

The new prison in New York was established at Elmira and with the help of these crusaders got itself named a reformatory. It was opened for prisoners in 1876 and placed under the superintendence of Z. R. Brockway, above mentioned. It offered nothing to prison administration that was entirely new. From Australia it borrowed the mark system; from Ireland the ticket-of-leave or conditional release; from American experience the several practices demonstrated in special institutions

for children already some three decades old. These articles of progress it molded into a single régime capped by the indeterminate sentence. The result was the first reformatory for adults that can claim the name, and the third great development in the history of penology.

THE REFORMATORY PLAN—In this phase of treatment the convict is looked upon as a danger to Society, wherefore he is incarcerated; but also as a potential asset to Society as a prospective, self-supporting and law-abiding citizen, wherefore he is treated with a view to his reformation, not by looking backward to his offenses but rather by looking forward to his return to competent citizenship. The key to the process is individualization in treatment. Reformation is an educational process through physical and intellectual activity. It affords encouragement through the reward of early release. It stimulates inhibition through the discipline of orderly control.

This newer conception of treatment spread rapidly in the United States. By 1923 the census enumerated 38 state reformatories in addition to 61 state prisons which are known to have adopted reformatory principles in varying degree.

The original idea in developing the reformatory was the selection of the most likely cases—young first offenders—taking them first by transfer from existing prisons and thereafter directly by commitment from the courts. Elmira was designed for male felons between sixteen and thirty years of age "not known to have been previously sentenced to a state's prison or penitentiary for a felony." But such a classification is of little value. The number of first offenders is small, and even if not previously convicted of felony, they are found, in most cases, nevertheless, to have been in conflict with the law since early boyhood. As a consequence our reformatories are only our enlightened prisons, paying more attention to vocational training and to health than the old-time penitentiary. Elmira in spite of its rigid restrictions on intake finds that 67 per cent. of its inmates have had institutional experience of some kind before. The Pennsylvania State Reformatory reports 35 per cent.[2] Of the 396 commitments to the Massachusetts Refor-

[2] See *Penology in the United States,* by Louis N. Robinson (Philadelphia, John C. Winston Co., 1921), p. 130.

matory in 1925, 196, or 49½ per cent., were repeaters, 40 of them in this same institution; 1 from State's Prison; 5 from the State Farm; 77 from various Massachusetts jails and houses of correction; 107 from reform and training schools, largely the Industrial School for Boys; and 33 from prisons in other states. Five of the recommitments to this Reformatory went up for their third time.[3] Of 17,429 convicts sentenced to all the prisons and correctional institutions for adults in that state in 1925, 9,117 were repeaters with a record of 52,551 known previous commitments,—an average of 5.7 apiece.[4]

Principal Features of the Reformatory Method—Essentially the reformatory sets up a process of education through work. It recognizes a *task* sentence rather than a *time* sentence, and deals as far as practicable with the prisoner as an individual rather than a figure in a group. To do this it must have and exercise the tremendous advantage of the indeterminate sentence; since without a definite time limit upon the sentence it becomes practicable to make release dependent upon conduct.

The Indeterminate Sentence—The genuine indeterminate sentence, with neither maximum nor minimum, has never yet been arrived at, presumably through our native fear of leaving the term of sentence to the discretion of public officers, and our consequent insistence upon reserving to the individual a constitutional right to know with certainty the penalty meted out to him under the law. In the United States to-day indeterminate sentences are of three types with two important variations therefrom; namely, (1) the fixed minimum and maximum, e.g., not less than two years nor more than five years; (2) the fixed maximum, e.g., not more than five years; and (3) the fixed minimum, e.g., not less than two years. A variation of (2) is found in commitments during minority, in which the age of majority established by law is understood as the fixed maximum. Still another variation appears in those apparent indeterminate sentences which hark back to certain

[3] See Annual Rep. Mass. Commissioner of Correction, 1925, p. 33.

[4] The alarming size of this record is due in large measure to persons committed to the State Farm, who are mostly drunkards and vagrants.

fixed maxima and minima contained in criminal codes and statutes.

In strict theory an indeterminate sentence should set no fixed term nor impose any condition other than the attainment of such a condition of promise of good citizenship as to make it advisable in the opinion of the prison authorities to release. A fixed sentence is in truth a relic of the age of vengeance. It is an instrument of punishment only. It is inconsistent with any theory of reformation. To put it in another way, fixed terms sound in punishment; indeterminate sentences in reformation.

The spread of the indeterminate sentence is slow, considering the tremendous opportunity it opens up to prison authorities to help the prisoner to help himself. In 1904 the proportion of indefinite terms among all adult prisoners listed in the Federal census was 15.2 per cent. In 1910 it had grown to 21.3 per cent. In the survey of 1923 it stood at 42.6 per cent.

Work—After all is said and done, work is the central problem of every institution caring for able-bodied persons. In greatest measure is it the problem of the prison. The normal prison inmate must have work. Without it he softens in body and mind. Save only the horrors of the torture chamber and the oubliette, the typical hell constructed by man upon the earth is the solitary cell where a prisoner sits the long hours and days and weeks without work. The world is now well convinced that if prisoners are to be salvaged for citizenship—yes, even if they are to be saved from insanity—they must have work. The problem is how to provide it.

Shall prisoners work in order that they may contribute as much as practicable to their support? Or shall that amount and kind of work appropriate to the teaching of trades and the reconditioning of the prisoner be provided and no more, regardless of costs of maintenance? Should a market for prison-made goods be denied because they would compete with the products of free labor? Should work be mere "hard labor" or can Society afford to give it such variety as to be interesting to the prisoner?

The normal individual who violates the laws of Society to

such a serious degree that in self-defense the community must take his liberty away, should not by that act be freed from his preëxisting obligation to support himself if by any means not inconsistent with humane treatment or the prospect of his reinstatement as a free citizen he can be made to carry it. We sometimes speak as though Society in taking a man's freedom away thereby incurs all responsibility for his support and the succor of his dependents. The attitude is a survival of that intense individualism which makes it customary to hate authority and to mistrust governments. The legal theory is that the individual is incarcerated only because he is a danger to Society if left at liberty. As nearly as practicable he must carry with his liberty in the hands of the community the same obligations of self-support that he was supposed to have carried with his liberty in his own possession. That most criminals are parasitic and dependent before commitment is a deceiving fact rather than an argument.

On this theory of work the prisoner should produce as much in values by his labor as he can consistently in view of his health and rehabilitation. This means quantity production in the prison. It also means markets. The fallacious attitude of organized labor in the United States is one of the primary chapters in American fatuity. It has been contended that prison-made goods compete with the products of free labor and thus tend to drive prices down, which in turn force wages down. As the prisoners are not paid, the free laborer must take less. The laborer forgets that the lowest common denominator of mankind is the stomach and that it is by the standard of the stomach that all taxes are paid. That is to say, we all have stomachs and they all become empty. They are all surprisingly alike in the food they will take in and the frequency with which they grow empty. It is through the prices of the things we buy that we pay the taxes. It is through the taxes we pay that we support our expensive prisons.[5]

Looked at from the point of view of the prisoner, it costs in almost every case more than can be made out of it even at full market prices, to carry on a manufacturing process in

[5] The value of the several state prison and reformatory plants in 1923 was returned at $65,300,000 and the annual budget at $20,000,000.

a prison. The laborers, unlike free workmen, cannot be picked for their fitness to perform. They are there and the work must be fitted to them. The idea of competition upon any real scale is a chimera, and the notion that a man who, before conviction, was eligible to work and produce wealth is by that act deprived of the obligation, a fallacy. Yet so strong has been this opposition that most of our states forbid the sale of prison-made goods in the open market and confine their use to public institutions and departments. Broadly speaking the "State-use" system is the standard American solution of the market for prison-made goods.

In earlier days (down to the present in a few places) the labor of prisoners was farmed out to a private contractor or lessee who took such profits as he could make out of the men, returning to the government a certain fixed amount per day for each convict's labor. This, however safeguarded in the contract, meant slave driving. The chain gang, whether in public or in private hands, stands out therefore as chiefest among the prison tortures of modern times. It is the present-day expression of the historic "galleys." Gradually the contract system is disappearing, and is destined to become only a memory. Its variations, the contract system, by which control over the prisoner is largely retained by the prison authorities and in which the work is done for the most part in prison buildings, is an amelioration of the lease plan. So also is the piece-price scheme, by which the prison authorities conduct the business at the prison, the contractor paying so much per unit of goods produced. The most modern variation of work by prison gangs under the control of prison authorities upon road building and other public work offers the advantage of open air and is best for the prisoner's health. These variations are to be differentiated from the original lessee's gang only by the degree to which they keep the control of the prisoner in the hands of the prison authorities.

Little need be said here about the sort of labor so common in older institutions, which produced nothing of value and amounted to a treadmill for the workers. In the workhouses of England the favorite task was picking oakum, as dumb a chore as could be imagined. In many prisons the breaking of

rock with a hammer was so much a favorite as to give rise to the slang phrase "Working on the rock pile." Stones so broken could be used in paving and building operations, but because of speedier mechanical methods, it is a profitless, dead-level task not worthy of the name of labor.

An extensive development of work in our reformatories has been the special shop work designed for the teaching of trades. Often this is combined with carefully designed occupational therapy. For instance, one gang of men may work at the making of hollow concrete building block or in a brick yard, while another gang, of the nervous, difficult fellows, may be occupied with the careful hand task of cane-seating chairs. Cane-seating by hand is now comparatively unproductive, but it has therapeutic value.

More and more the tendency of the reformatory is to move to the country where extensive acreage can be had for agriculture and often where valuable deposits of shale or clay can be found to support special industries such as the making of brick or tile. The extensive brick yard at Occoquan, and the industries of the Indiana institutions are first-rate examples of such developments. Open-air labor of this sort is conducive to the prisoner's health, and it affords a maximum of production for a minimum of intelligence and skill in the laborer. Thus it satisfies the requirement that the health of the prisoner shall be conserved; that he be prepared for honest labor as a habit when he shall be delivered back again into the community; and it affords the greatest practicable recoupment for the cost of running the institution. Incidentally through agriculture it provides products mainly consumed on the farm, and through the making of building materials it supplies the raw materials for institution development, thus avoiding "interference" with the open market as completely as possible. With this view of labor as a problem of the institution, it is safe to predict that the reformatory of the future will be a farm colony where outdoor labor predominates. The expediency of the present which drives these institutions onto the undeveloped land may well become the necessity of the future, as probation and parole continue to deprive the prison of all but its irreclaimable rounders.

Educational processes in American prisons, aside from vocational training, are of the most primitive sort. Lectures given in assembly to instill moral precept, and a few classes in language and other rudiments of elementary schooling, are about all that is practicable. Systems which provide as much as half time at school (the largest proportion in the country) cannot get much higher than the elementary, ungraded class. To a considerable extent the teaching is done by the better-trained inmates. Libraries still contain little but fiction since little else is called for; and the method of reaching the prisoner with books does not encourage the reading habit. A list of books for a stupid fellow means little but marks on a paper.[6]

Sanitation and the Protection of Health—If the visitor to one of our best reformatories could step merely through the great wall into one of the prisons of John Howard's time, he would see a vast improvement in health and sanitation occurring in this lapse of one hundred and fifty years. In that old régime jail fever drew the veil over prison misery and cruelty for a large proportion of the inmates each year. Howard affirmed that more died of it than were put to death by all the public executioners of the kingdom, and that, too, in a day when executioners were the rule and incarceration, for anything more than short periods, the exception. Many a luckless watcher was snatched from the executioner as he sat in the double shadow of death listening to the construction of his own gallows. Even the bigwigs who came to try at the assizes caught it from the prisoners in the dock. In 1577, at "the bloody assizes" held in Oxford Castle, the Lord Chief Baron, his sheriff and some three hundred more died of jail fever within the space of forty hours. A like tragedy occurred at the Lent assize held at Taunton in 1730. This old name for what we now recognize as typhus fever, spread mainly by the body louse, is a disease of badly ventilated, overcrowded,

[6] In Massachusetts the State Division of Public Libraries has charge of the extension service in institutions. It reports for 1926 the following movement of books in certain of the correctional institutions: State Prison —average daily population, 870 persons, total number of books used, 35,031, of which 93 per cent. were fiction; of the non-fiction, poetry, history and travel, trades preferred in order named: Reformatory for Women—average daily population, 275, total circulation, 15,698, non-fiction, 21 per cent.

unsanitary quarters in which human beings are packed together. Hence its frequency in pestilential jails where cleanliness was remote from godliness.

John Howard did not discover the germ of typhus but he did discover the louse, with the result that his suggestions were followed in time with marked success. In the best modern prisons cleanliness is probably the most striking characteristic as the visitor steps inside the grating for the first time. Concrete floors are clean. Steel bars shine. Brass work is polished. The kitchen, the bakery, even the scullery, are all as clean and sweet as hard work and strong soap can make them. Few private homes are kept consistently as clean as a modern prison in the United States. And few places exist where the average health is so good. Plumbing is kept clean, sewage disposal is adequate, heating is scientific in order to be economical. Ventilation is mechanically fool-proof. And the inmates are given a fair portion of the day in the open air. Though many prisons are below such a degree of excellence, and jails and workhouses are not to be thought of in the same category, the modern reformatory leaves little to be desired in the adequacy of its sanitation and its general scheme of protecting the health of the prisoners.

Physical Examinations—In addition, a resident physician ministers constantly to the health needs of the inmates. A well equipped infirmary receives all the sick immediately, and each convict is given a thorough physical examination upon his admission, to be checked up or repeated at intervals during his stay. The average citizen could not hope to be so well protected, nor so well fed. Not that the prisoner is treated to French pastry—far from it! But he is fed what is good for him, whereas the free citizen eats what he likes. In a modern farm colony, many a sallow rat comes out of the alley to serve his time, flabby, pasty and pale in condition and demeanor, to appear after a few months of servitude as a well bronzed, hard-muscled workman, unchanged in disposition perhaps, but vastly the better man for his physical regimen.

Mental Examinations—To-day is just dawning a new feature in prison administration. The procedure in Massachusetts is the best example. It is the mental examination of

all prisoners. There, a thorough psychiatric examination must be given to every person sentenced for more than thirty days, and to every repeater regardless of the length of his term. This examination must be made under the direction of the State Department of Mental Diseases and by a specialist assigned by them. The result must be placed of record with the Department of Correction and the Department of Mental Diseases, and is available for examination by any court in which the subject of it may subsequently come to trial.

This new departure marks the beginning of scientific classification of prisoners. It renders the use of probation and parole still more intelligent. It enables Society to be just while it is trying to be humane, and equitable when it is inclined to punish. Society in its new penology ceases to deal with law breakers in the mass and finds itself more and more driven to deal with the individual delinquent. It recks less of the crime than of the criminal. By slow degrees it is coming to treat the offender for his condition rather than his conduct. Modern science opens the way to a scientific evaluation of this individual who cannot get along in Society as other men do. It makes real diagnosis practicable. And knowing the diagnosis, government is in a more favorable position to find a solution of the trouble. Thorough mental and physical examination of prisoners will be followed naturally by sounder classification, not according to offenses or physical age or previous condition, but rather upon present condition and potentialities for treatment looking to reinstatement in the free community.

## FOR THE STIMULATION OF THOUGHT

1. Consider the four phases of the history of governmental action in the conviction and treatment of criminals in the light of Chapter V. Has the American idea of government by the people had anything to do with the epoch of attempted reformation? How much of the new era of prevention is a direct reaction from the new psychology?

2. Compare the Pennsylvania and Auburn systems with the present-day development of farm colonies. Do they reveal basic differences in the attitude of the State toward the individual? Is there anything in this evolutionary process that may be considered a reaction from those changes in community thinking indicated in Chapter IV?

3. What is the significance of the fact that probation, parole and

the indeterminate sentence were forced upon our system of penology from without?

4. What are the grounds upon which organized labor opposes the sale of prison-made goods in the open market? What do *you* say to the assertion that every person incarcerated for an offense against Society should be required to labor for his own support just as he is supposed to labor when at liberty? Can you reconcile it with the attitude of Labor?

5. In a model prison system which you might devise would you pay wages to prisoners? Why? Is the Baumes law a step backward in the individualization of treatment?

6. What sort of follow-up must be developed in order to render the psychiatric examination of prisoners an effective instrument in the evolution of penology?

## FOR FURTHER READING

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## CHAPTER XVII

# THE JAIL AND THE WORKHOUSE

The jail, which is the present-day cicatrice of the prison sore of other days, requires special mention. It is the oldest form of prison, and persists because the causes which brought it into being are still operative to a degree. It is the local place where offenders were first deposited for safe keeping pending their trial and after their trial to await their execution when convicted. At a still later time it became the place for the serving of sentence when the death penalty was largely supplanted by servitude as a punishment.

The Jail and the System—In the modern world the jail represents the smallest unit of the prison system. It is the prison of the village or the town. Apart from police lockups, it is the permanent place of detention of the local unit in our democracy. It is a county institution since our system of trial courts is on a county basis. Including city lockups within the definition, it is therefore a large group of small prisons, for the most part housing short-term misdemeanants. There are some 3,000 of these institutions in the United States, at least four-fifths of which are county institutions. They house about one-fourth of our prison population at any one time, but they receive and discharge at least three-fourths of the whole, since they take the short termers.

The fundamental purpose of a jail is to serve as a place of detention of prisoners before trial, which shall be located near to the place of trial, and usually to the scene of the alleged crime. The practice therefore of incarcerating those persons who had been convicted of crime when imprisonment began to be looked upon as a substitute for death, arose from a variety of causes, chief among which was the absence of any other place to put them. A powerful influence favoring the continuance of the practice in the United States long after state prisons and reformatories came into existence was that pride

of local independence which fends off overlordship in all particulars wherever possible, no matter how advantageous.

This double function which the jail has performed since the thirteenth century, still obtains to-day, with the result that there is little in the way of classification of inmates and small incentive to deal with the individual convict. When we consider his status, we find him usually a short termer (in more than half the commitments less than one month), in half the cases a repeater, in a fifth of the cases an old rounder with a long record. We see him in a group composed of all ages, young children only excepted, and of both sexes without equipment for duplicate housings. We discover him to be an individual, on the average, who has had no steady occupation in life and is unfitted for a trade. Recognizing him thus, it is easy to visualize the unclassified stockade where prisoners sit idle in cells or slouch about the premises on mere task-made errands that lack the semblance of purposeful employment. The American jail of the present year differs little from its prototype of the seventeenth century save in the matter of sanitation, in which particular also it still is declared to be a disgrace to the nation. To this day there is little purposeful work done in the county jails of the United States. They have been passed by in the march of progress toward occupational therapy and a well developed state system of healthy support-producing labor. Naturally the smallness of the jail unit does not admit of extensive manufacturing operations, and the state-use system must be so completely under the control and direction of state authorities that the local unit, with its large degree of independence, does not easily fit. Jails therefore have been left to develop their own individual systems of work. The labor gang under public direction on highways is beginning to offer a partial solution in the more populous counties.

The greatest improvement in the jail system has come from the outside and does not touch the institution, strictly speaking. This is the progress of classification by which juveniles and women have, to a large extent, been taken from the jail population. Probation, parole and the growth of special institutions, such as juvenile training schools, reformatories for women and farm colonies for drunks and vagrants, have drawn

off at the top of our jail population the more hopeful element, leaving only the dregs—an unclassified and largely unclassifiable mass of slag, probably better off dead. These movements from the outside tend not only to reduce the jail population to the lowest terms in quality, but also are making for its great reduction in quantity. Gradually the jail is disappearing, both as a place of incarceration for convicts and also as a place of detention for persons awaiting trial. It is a false unit in present-day corrections. It is therefore destined to disappear in its present form.

THE AMERICAN WORKHOUSE THE DESCENDANT OF THE ENGLISH WORKHOUSE—The American workhouse is our direct descendant of the English establishment for the suppression of vagrancy. Unlike the English workhouse, which was a house in which the poor could be given work to do, it has carried with it always the implication of a place of correction. In 1552 the king and council gave the Mansion House of Bridewell to be a place of detention for sturdy vagabonds. In 1557 it was opened to inmates. In 1575-76 Parliament authorized the erection of a "Bridewell" in any county in the realm. In 1609-10 this permissive act was made mandatory. At first the house of correction was part of the same place with the workhouse. The Act of 1609 declared the purpose of the house of correction to be "to set rogues or such other idle persons to work."[1] As the process of separating offenders from the worthy poor went on, it was seen that the house of correction as an adjunct of the assizes was a county institution, while the workhouse as a place to provide housing and work for the poor was a municipal or village institution.

Early American experience was similar to that in England with regard to the combining of poor relief with corrections. Thus in 1748 New Jersey passed an act enabling the County of Middlesex to erect a poor house, a workhouse and a house of correction presumably in a single structure for the poor, for children and for vagrants. The first almshouse at Boston (1660) housed the vicious and idle with the worthy poor. The second almshouse was a workhouse, an almshouse and a Bride-

[1] VII James I. C. 4.

well under one roof. It was not until 1735 that rational separation was undertaken, and then with only partial success. By the middle of that century the almshouse and Bridewell still stood on the opposite sides of a party wall. In 1821 a house of industry was set up, apart from the almshouse. This separate plant quickly took on the aspects of a correctional institution as well as a place where the able-bodied poor might find work.

In 1699 the General Court of Massachusetts passed an act requiring a house of correction to be built in every county. The immediate cause of this enactment was the number of vagrant and delinquent children in need of disciplinary care. The same act sought to make provision "for setting the poor to work." Thus from earliest times the workhouse and the house of correction are interchangeable terms in America. The English workhouse for the able-bodied poor, though it appears in these old American copies of English statutes, has ceased to exist. Essentially the house of correction is a local prison, too small in size to provide a proper work unit, too insignificant and too bound up in politics to attract a warden who is an able rebuilder of human character—an institution destined therefore, as a place for custody of convicts, to suffer the same ossification characteristic of its nearly synonymous counterpart, the jail, and to disappear altogether with the scientific enlightenment of the future.

Greatest among the forces making for sound classification have been those two expedients, probation and parole, by the first of which the transgressor is given a trial in better conduct under supervision before trying the institution phase of treatment, and by the second of which the prison limits are extended by the device of release before termination of sentence in order that an effort at readjustment by the offender may be made as soon as his institutional record warrants the attempt.

Probation and Parole—The jail, the house of correction, the prison, the penitentiary, the reformatory, and eventually the classified farm colony, are a series of steps upward in the science of penology. One and all they still look at the problem from the point of view of the crime instead of that of the criminal. With the exception of the last, they stand with a

door that is opened but heavily guarded to prevent egress. They think in terms of the present inmate rather than that of the young man or the young woman making the struggle of life in the world of pre-delinquency. They ponder the problem of safekeeping. They think mostly in terms of four rows of steel bars, staggered. Only to the slightest degree do they peer out into the Beyond to find what becomes of their output. Essentially they are still depositories for human wreckage. It is the frailty of most institutions—of prisons par excellence—that reforms seldom start within them. Here and there a strong-minded leader accomplishes something, but for the most part prison reform is a record of a fight for the humanities made from the outside and in spite of stern wardens and punishment-loving law makers. Latterly the demand for more humane treatment has been reënforced by a clearer understanding of the problems of human behavior, so much so that this field of penology—which for the moment we have named a science, but which in truth is but a fragmentary art, based upon a dour content of experience—is in a way to take on a scientific aspect and become a real philosophy in the furtherance of the public welfare. It is the purpose, in this chapter and the two that follow it, to recount the four more important advances made thus from the outside. They are probation, parole, the scientific appraisal of the offender himself, and the development of coherent systems of correction under state management. Juvenile correctional institutions are omitted here and recounted under the subsequent chapter on Child Care, even though they relate to corrections.

Probation Began in Boston, 1878—In the '70's a practice grew up in the criminal court at Boston, Massachusetts, turning the more hopeful offenders over to a priest who made it his devoted service to befriend these individuals and to perform the duties of the official we now know as a probation officer. The legal status of the offender was preserved by continuing his case. With the threat of return to prison hanging over him, he was encouraged to straighten up; to get a job; to want to be a self-respecting citizen. Effort was made to get help for his dependents if they were in need. This plan worked well, so that in 1878 at the instance of the Mayor of

Boston, legislative authority was given to appoint a probation officer for Suffolk County (Boston). It is the first occurrence of the word "probation" in statute law, and the beginning of the principle of probation in the treatment of offenders.

In 1880 the statute of 1878 was extended to all cities and towns. In 1891 the power of appointment was transferred to the courts and made mandatory upon each police, district and municipal court. The superior court soon availed itself of the new authority. In 1907 a further important step appeared in the authorization of all police, district and municipal courts to appoint probation officers for wayward and delinquent children. Thus adult probation actually preceded juvenile probation in point of time.

Early Development—As might be expected, development under these acts in the numerous small districts of Massachusetts was uneven. Appointments, first made by political office-holders, were frequently political and without merit. Even in the hands of the courts, under the amendment, some of them were still political. Too often a superannuated pensioner worn out for anything else was put into the "sinecure" of probation officer. The office was not recognized as one of the most exacting in skill and personality. The final step needed in Massachusetts to establish probation as a system in the state scheme of correction was taken in 1908, when the Statewide Commission on Probation was created.

In this new body was lodged the power to prescribe the form of all records and reports of probation officers and to make rules for the registration of reports and for the exchange of information between courts. It could (and did) establish a permanent annual conference of probation officers for the purpose of developing standards and uniformities in action. An important feature of the Commission's power lay in its unlimited authority to require of every probation officer in the state a report in such form and at such time as it might require, regarding the work of probation in his court; and in its further duty of keeping a record of all cases, deemed expedient, for the information of the justices and probation officers.

Here was a beginning of the first mighty inroad upon a century-old habit of throwing criminals behind heavy bars. It

is the third stage in the evolution of penology: first, death inflicted by despotic government; second, imprisonment by the people aping the manner of kings; and third, individual treatment with the indeterminate sentence and parole as primary instruments.

Probation remained a Massachusetts monopoly for two decades, in spite of the vigorous discussions of the National Prison Congress. In 1899 Rhode Island established probation for both adults and juveniles, and Minnesota and Illinois began it for juveniles. Their results were watched with interest by prison reform groups throughout the world with the result that by the time another generation had gone by the idea had become firmly planted in the attitude of the state toward the law-breaking individual. Professor Robinson records thirty-five states and the District of Columbia as having adopted adult probation by 1921 and forty-seven states together with Alaska, Porto Rico, Hawaii and the District of Columbia as employing probation for juveniles.[2] The annual total of probationers was easily above one hundred thousand. By 1925 twelve countries of Europe had probation laws for juveniles, of which five extended the system to adults. Chief among these countries were France and Denmark.[3]

The Juvenile Court Advanced Probation—The greatest single impetus in the upgrowth of probation was the establishment of the juvenile court in 1899;[4] the second, the organization of the National Probation Association in 1907. The first of these centered attention upon the juvenile delinquent and occurred coincidently with the upsurge of interest in the study of psychology; the second created a forum for the discussion of behavior problems and methods of treatment. Here it became practicable for probation officers, penologists, legislators, to observe the results of probation practice in all the states and to debate the underlying principles of sound action.

As the several probation systems in the United States contain the same features as the original Massachusetts law, and

[2] *Penology in the United States*, by Louis N. Robinson, 1921, p. 196.
[3] See *Proceedings National Probation Association*, 1925, p. 130.
[4] See Chap. XXX, *post*.

as that jurisdiction has carried the plan to an enviable state of successful operation, it will serve best to describe the content of probation as carried on in America by describing somewhat in detail the practice in Massachusetts.

During the year 1924, of 142,188 persons convicted in the courts of Massachusetts, 42,122 or 29.6 per cent. had their cases placed on file; 57,249 or 40.3 per cent. were fined (includes minor traffic violations); and 33,544 or 23.6 per cent. were placed on probation; only 9,273 or 6.5 per cent. were committed to institutions. This grist of probationers was made up of 2,729 juveniles (under seventeen) and 16,833 adults.

In the superior courts, where more serious offenses are dealt with, the percentage of probationers in all convictions was 17.3. In the inferior courts, among the misdemeanants, it was 26.5 per cent. The chief offense for which probation was used is drunkenness, 13,576 of all the cases falling under this head. Larceny was next with 3,127. Then came violations of the motor vehicle laws with 2,854, and liquor law violations with 2,414. Non-support produced an aggregate of 1,498 cases.

In terms of results for the year examined, 80 per cent. of all the cases were discharged at the end of probation without further court action. Of the 20 per cent. which showed a degree of failure, one-half, or 12.6 of all probationers, were surrendered by the probation officers to the court.

The system shows itself therefore to be far from perfect; but the fact that four out of every five offenders can be returned to the community without incarceration and without further offense during the probationary period is proof of value in this individual method of treating law breakers.

The Massachusetts Study of 1923—As to what becomes of the probationer *after* he has been given his liberty and government no longer holds a restraining hand upon him, little analysis has been made thus far. One thorough bit of study, carried out by the Massachusetts Commission on Probation in 1923, affords some indication. Under a legislative mandate to survey the conduct of probationers subsequent to

their probationary term, to ascertain "the efficacy of probation as a means of securing lawful and orderly behavior of persons who have been offenders," the Commission selected the first half of the year 1915 as the period in which the cases to be studied for subsequent results were placed on probation. This gave them an eight-year interval after probation and satisfied the further requirement of the legislative resolve that study should extend "sufficiently far into the past to show the probable permanence of results."

The records of 2,114 persons were followed. Of these 312 were children under seventeen. Of the 1,802 persons over seventeen, 205 were women convicted of general offenses (other than drunkenness, vagrancy, non-support and bastardy); 37 were female "drunks." Of the 995 men, 383 were convicted of general offenses; 157 for non-support; 51 for bastardy and non-support of illegitimate child; 9 for non-support of parents; 74 for vagrancy; 216 for drunkenness; and 105 for being confirmed drunkards. One hundred and ninety-nine of the entire group were known to have had previous court record.

With meticulous care the Commission's workers followed the subsequent history of each of these persons. Among the adult general offenders the careers of 168 men and 205 women were ascertained. Fifteen men had died and three men and seven women had been committed permanently to institutions for the insane or the feeble-minded. Seventy-five per cent. of the men were known to be free from the drink habit; 14 per cent. were moderate drinkers; and 11 per cent. were drinking to excess. Eighty-three per cent. were steady workers; while 17 per cent. worked irregularly. One-half of these irregulars were among the drinkers. Twenty-six per cent. of the women were found to have had subsequent court records; 48 per cent. showed none. After persistent effort no subsequent court record was found for the remaining 30 per cent. Nine per cent. had been committed to institutions subsequent to probation. Of 381 male general offenders, 59 per cent. completed probation satisfactorily; 18 per cent. went through with probation but showed no improvement; 13 per

cent. disappeared; the probation officers surrendered 9 per cent. Thus the demonstrated failures, the surrenders and the disappearances totaled 22 per cent.

Following this same group into the after years, 36 per cent. showed subsequent court record in which one-third, or about 12 per cent., were sent away to institutions. Forty-three per cent. were shown to be free from subsequent record while an additional 21 per cent. afforded no information. There is a reasonable assumption that this latter group also were free from subsequent court record.

In this group of general offenses were 7 for assault on an officer, 4 for assault with a dangerous weapon, 3 for robbery, 6 for larceny from person, 3 for forgery, 1 for abortion and 1 for indecent assault. During the period studied it is to be noted that the courts placed no offenders on probation for manslaughter, burglary, rape, arson, or any other of the extreme crimes. Of the more serious above mentioned as among these probationers, 42 per cent. of the assault cases came out with subsequent court record. The corresponding percentage for larceny was 40; receiving stolen goods, 40; assault and battery, 37; breaking and entering, 32; sex offenses, 22.

In 138 non-support cases, the husband and wife were reunited in 7 instances; home conditions were improved in 30; additional support was the only gain in 48; while 34 were surrendered by their officers and 19 disappeared. The percentage of favorable result was 62. Subsequently the showing of this group was—divorce, 13 per cent.; continued separation or desertion, 21 per cent.; wife in insane hospital, 3 per cent.; widowed, 5 per cent.; couple married and living together, 40 per cent.; disappeared and information incomplete, 18 per cent.

In a group of 294 delinquent boys followed for subsequent records, 44 per cent. showed up again in court. Thirty-nine per cent. are known not to have been subsequently in court. Adding to this a number of partially proved cases and some unknown would make a total of 56 per cent. with no known record subsequent to probation. Eighteen per cent. were later committed to institutions. Taking the juvenile probationers

as a group, the study shows that eighty-seven out of every hundred carried through probation have not subsequently been committed to institutions.

Fragmentary, as such studies necessarily must be, this examination draws back the curtain from a considerable field of human behavior and reveals the validity of the probation effort. If the observer, thinking of these findings, were to step inside the bars of a modern reformatory and observe the inmates, in their cells at evening; in the mess room at meals; in the shops at labor; in any of their numerous gang line-ups; he must look hopefully back through the steel grating into the outside world and wish no man the hazard of coming out of the one into the other without every serious attempt to hold him under a qualified liberty at least; directing his conduct to a degree; helping him with a constructive, purposeful friendship to brace into the requirements of life with a will to meet them honorably. Probation affords that qualified liberty. Compared with the short-term jail commitment it is in fact a measure of severity. In all cases it is to be considered a part of the "penalty" rather than a sort of release therefrom. Its process has become far more expert than in 1915 when the Massachusetts data were determined. The degree of that improvement is undoubtedly a guarantee of better results, surprisingly good as those older findings are shown to be. Probation is the great laboratory of the present in which is being determined the character and scope of the prison of the future. It is the greatest single force moving from the outside in the interests of prison reform.

Parole—The second great force operating upon the prison system from the outside is the parole system. It is of the same nature as probation; serves similar ends and flanks the prison on the one side as probation guards it on the other. Prisons cannot reform convicts; but taken together with an intelligent system of probation before and parole afterwards they can offer such a regimen of discipline as will supply the necessary lack in the treatment of the more confirmed offenders.

The system is used with increasing frequency by our prisons where even the most dangerous offenders are kept.

As some indication of the application of parole to state prisons, Indiana, between April 1, 1897, when her adult parole law was passed, and September 30, 1926, placed 19,672 prisoners on parole. Of these 599 were from the Woman's Prison; 11,669 from the Reformatory at Pendleton; and 7,404 or 37.6 per cent. from the State Prison at Michigan City. As a further indication of the results, one-fourth of all these probationers were rated as failures. The women made the poorest showing; the prison paroles the best. Out of this group of failures 2,541 were sent back to prison. The remaining three-fourths finished their parole or were at the end of the period still under supervision. The entire group reported earnings of $7,627,914.12 during parole; this item covering reported expenses and leaving $68.62 apiece as net earnings.

Parole is Not a Curtailment of Sentence—Parole is not a curtailment of sentence, it is an extension of the prison limits so that a part of the sentence may be spent under the same qualified liberty as the prisoner enjoys on probation. In this sense it is a curtailment of the prison phase of the sentence, but always with a return to that phase hanging over the convict in the event that he violates his parole. Parole exists for the purpose of bridging the gap between prison cell and the normal niche which the cell inmate expects to occupy in the free community.

The Two Basic Pillars of Parole—The validity of parole therefore rests upon two basic pillars, both of which are necessary to maintain its virtue and to make it effective. The first of these is such a system in the institution as will open to the convict the opportunity to earn his qualified liberty by good conduct and a showing of reformatory accomplishment. This failing, it is usually the politician who decides the time and expediency of parole. Thus parole from a modern reformatory, where a sound work system obtains, and where able leadership helps the inmate to find himself, is a next step in the process of fitting the convict for complete freedom. But parole from a jail or house of correction, where inmates perform no consistent labor, and where no basis is offered for improvement, is usually decided by the county authorities in

favor of the wiliest lawyer who for money or other thing of value will espouse the cause of the inmate. Parole of this sort is vicious, and breeds a bad reputation for parole of all sorts.

The other foundation principle is that of skilled supervision of the convict on parole. Supervision of a probationer or of a paroled prisoner constitutes a problem in the readjustment of personality to environment. In the truest sense it constitutes individual case work. The officer who lies to his charge, or gives him false impressions, or hands him a variety of cheap moralizing, is a failure at the start. The seasoned convict, if of normal mind, is usually something of a judge of character. He is not easily fooled. He is in sore need of a helpful friend, if he did but know it. He can realize that need and make use of such friendship only on a basis of complete confidence. This he can secure only from an abler personality and a stronger will than his own—from an officer who can lead without that display of force so galling and so antagonistic to the anti-social egotism of the offender.

The Indeterminate Sentence—The greatest aid to a sound system of parole is the indeterminate sentence, since the time to be served is thereby removed from fixed limitations and placed frankly upon a performance basis. It is only by a man's showing that the wisdom of advancing him a part of his liberty can be established. It is possible to prepare a fixed-termer for parole; but it is difficult. The parole system as exercised in some of our foremost training schools for juveniles approaches sound probationary oversight and is extended upon a real showing of likelihoods in the youth. But for the most part parole from our institutions for adults is an ill-managed affair amounting to an administrative method of evading the intent of the criminal law. Thus far it is inextricably mixed up with the fixed sentence, the idea of punishment rather than reformation and other of the indications of the old régime which dealt with the crime; whereas in its fundamental concept it belongs to that new régime in which the criminal rather than his crime constitutes the problem. But poorly executed as it still is, it represents an advance over the fixed term at hard labor, or, what is much worse, at idleness. A prison not lifted out of itself tends to become a storage vat for undesirable humanity. To lift it

up it must be made the central element in a three-phase process, namely, the pre-delinquency stage in which prevention is the aim, and in which probation has its effect; the institutional phase in which a regimen of discipline serves to teach the individual more about the necessary order of things and his place in the scheme; and third, the after-institutional phase, or zone of readjustment of the offender to his rightful place in the free community. This is the rightful field for a system of parole which studies the man, gains his confidence, places him on a basis of honorable attainment in order to gain his parole, and then follows him with organized friendship out in the world, helping him to readjust himself without snapping.

## FOR THE STIMULATION OF THOUGHT

1. From what source comes the slight hope of reformation of the county jail?

2. If you believe in local self-government, how can the county jail be made a part of a coördinated State penal system without its complete divorce from county auspices and county politics?

3. What internal reforms are practicable in the county jail of to-day?

4. Probation is popularly thought to be a form of leniency: it is considered by penologists to be a measure of severity. What is the reasoning *pro* and *con?*

5. What is the greatest defect of the probation system as now administered?

6. Will the widespread use of psychiatric examinations reduce the dangers of probation?

7. What is the aim of Society in the various methods of treatment which it sets up for the individual convicted of crime? Is punishment properly included in this aim? With what ultimate object does Society inflict punishment?

8. Is parole an instrument of reform in itself; or is it to be considered only as part of a plan of individual treatment beginning with the convict before his release? Compare the work of a parole officer with that of a hospital social service worker.

9. Should sentences ever be fixed? Should the courts in the future State do more than convict the offender and commit him to a public board for treatment?

10. Where the confessed perpetrator of a cold-blooded murder escapes the death penalty on a plea of mental abnormality not amounting to legal insanity, and is sent to prison for a term of years, should he be paroled? Why?

## FOR FURTHER READING

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## CHAPTER XVIII

# EVOLUTION OF A SYSTEM OF CORRECTION

As time has witnessed the growth of systems of correction, we find sounder methods of appraising the offender coming into use. We find the general direction and the responsibility for such a system tending to lodge itself in the largest unit of government, the State. From this growth there have become discernible several basic principles of governmental action. An essential feature of the scheme by which society identifies and follows the law-breaker is the maintenance of adequate records. In general, as might well be expected, the system of records involved in catching him is much better developed than that relating to his safe keeping. Police departments have worked out the Bertillon system of measurements; and the unified gallery of photographic evidence, together with the remarkable fingerprint records. These are well enough known and do not need further mention. It is the prison, the probation, and the parole records that are emphasized here. The criminal records are referred to only in discussing the problem of their unification and centralization.

The ancient jail practice of holding the mittimus and keeping in a bound book a few items, such as an address of some relative to notify in case of accident or death, is perhaps adequate to a plan which dealt only with the offense. But modern penology deals with the individual delinquent. It must know him in his character as well as in his physical person. It must know the environment out of which he came to public custody. These facts it must know in order to gauge the probabilities of his successful reinstatement into the old environment; into an entirely new set of surroundings; or, in the alternative, a changed-over set of circumstances as near to the original out of which he came as may be safe and practicable. In other words, modern prison records are not made to accommodate

prison management alone; they must suit the vastly broadened scope of correctional treatment, including probation, rehabilitation and parole.

PHYSICAL EXAMINATION—Every person coming to public custody should receive a thorough physical and medical examination upon reception, with a check-up at least at annual intervals. Such a test should detect any special faults, such as the presence of tuberculosis or venereal or other disease. It should uncover malformations or physical handicaps. In short, it should make the prisoner's physical person an open book to those who must face with him the problem of his reinstatement as a self-supporting citizen. The best penal systems now call for such adequate examinations and permanent records thereof.

MENTAL EXAMINATIONS—Down to the present decade further examination seemed impracticable because the technique of mental tests was so primitive and unreliable. The sciences of psychology and psychiatry have now developed so far that tests to gauge intellectual quality are not only practicable but highly advantageous to those who seek to know the offender. The Massachusetts law in this regard is the pioneer statute on this subject in the United States. In 1919 a special commission studying the care, custody and treatment of the defective, delinquent, the criminal and the misdemeanant recommended the passage of a law requiring psychiatric examination of all prisoners committed for thirty days or more and for all repeaters regardless of length of term.[1] No action was taken upon this recommendation though certain other proposals designed to fit into a consistent whole were enacted. Finally in 1924 the original proposal, perfected in details, was made law.[2] The State Department of Mental Diseases was given the direction of the system of examinations. Specialists connected with the Department were to be employed. Complete records of these examinations were to be filed with the Department of Mental Diseases, the Department of Correction and the Commission on Probation, which last body should incorporate them in its central records for the use of any court making inquiry. Thus far some four thousand individuals have been examined under the

[1] House Document (Mass.) 1403 (1919), pp. 38, 48.
[2] Mass. Acts, 1924, Ch. 309.

law and the findings made a matter of permanent record for the use of the courts, which have so many repeaters to deal with. Already the State Departments are working out a method of taking statistical data from these new records as a further aid in the study of criminals.

Physical and Mental Examination—Thoroughgoing physical and mental examination of prisoners is the requisite to intelligent classification according to probable degree of reformability. Even before we had the modern science of psychology, the obviously insane person was segregated not so much because he constituted an irreclaimable element but because it seemed no longer just to "punish" him with imprisonment and the stigma of the convict. The next group to be taken out is the defective delinquent. In Massachusetts, under the authority of a statute of 1911 [3] departments for defective delinquents were set up, in which are gathered those prisoners diagnosed as markedly defective. In this new classification they are looked upon as custodial defectives, dangerous to society. Commitments directly from the courts are now helping to clear the regular prison population of some of its most difficult and least hopeful individuals. The next group to receive consideration is undoubtedly that of the feeble-minded, who compose a large minority of our prison population, especially the short-term inmates of jails and houses of correction.

Growth of State-wide Control of Corrections—Whoso offends against the law injures the whole people. Law is the rule which sound custom has set up for the conduct of every individual in his relationship with other individuals throughout the whole of the social unit or community. But since for practical purposes, the rule of law must be executed on the spot, we find the offender taken by force of arms and detained at the scene of his offense until the wise men of old, the judges of modern times, can pass upon the rule of law and its application to the facts. Thereupon, if the finding is guilty we proceed to "punish" the offender by the most effective and most economical means at hand. The means adopted in the beginning was quick death, and pending execution, as also

[3] Mass. Acts, 1911, Ch. 595. Gen. Laws, Ch. 123, Secs. 113-124. Acts, 1921, Ch. 441.

pending trial before conviction, we lodged the defendant in a cage at the top, or at the bottom, of the nearest castle. When times advanced somewhat, this cage became a jail and stood at the end of the Middle Ages as the exact replica of the present institution of that name.

In old England each court had its jail, and as incarceration as a mode of punishment was not employed until later, there was no need of anything more. Thus Parliament established the statute law, the common law courts discovered and declared the customary or real law, the Crown through the courts found guilt, but punishment was local. The inmate had to pay his own way in the jail which was conducted by a private individual under grant from the local government. A jail property was the keeper's own house in which he might have an estate for life or for years. They were usually erected at the expense of the county or the municipality.

But when felons ceased to be hung or beheaded or unloaded on the colonies, the problem of incarceration for long periods of time had to be met. By the time of the American Revolution the riddle was getting itself solved in some sort by setting up a jail at the expense of the entire state, managed by the state, to house those felons who under the old régime had been condemned to speedy death. These state prisons, springing up in Connecticut, Massachusetts, Pennsylvania and New York marked the beginning of the state-wide aspect of the modern prison system.

Once having embarked upon the punishment of felons, the states proceeded to multiply the units as the pressure of numbers made it necessary, until, within another half century, we find "eastern" and "western" prisons, "central" and remote. As soon as a multiplication of units appeared the weight of the problem of management together with problems of dividing line between local and state institutions, brought state boards of supervision and management into being. In this natural sequence of events was the stage set for the development of state-wide systems of corrections. Upon the state boards fell the burden of managing the fast multiplying units of the old storage days before real prison reform set in. With the coming of the National Prison Congress in 1870 there was set up a

forum in which state board and prison leaders could discuss methods and policies. Then came Brockway and the reformers with him who put forward the Elmira idea. Reform was soon in full swing.

The Beginnings of American Prison Reform—The new movement meant first the humane provision of work; next it called for the elimination of children and youth. These were housed in separate institutions called reformatories, increasing the state units by still another group. Then the reformatory, unable in its turn to keep pace with the wisdom of the times in the care, custody and treatment of juvenile offenders, yielded up its younger children and its less hardened offenders to probation, and to parole. This step called for still another unit in the state machine, in most instances a separate instrument attached to the courts. In Massachusetts it gave rise to a state-wide Commission on Probation, technically a part of the judicial system in the state scheme of government.

In such a rapidly growing system, that surviving marsupial of the ancient order of things—the county jail—could not go for long unmolested. The state took supervision. It began by limiting the sorts of offenses for which commitment should be made to the jail. It ended by allowing the state boards to transfer prisoners, to prescribe industrial methods, and to make numerous rules and requirements as to examination of prisoners, records and other information just as though all the inmates were the state's own prisoners which the county or the municipality were permitted for the time to lodge in their jail. As a matter of fact this is the legal situation: it is fast becoming the truth in practice. Were it not for the political influence of vested personal interest, bearing heavily in legislative corridors, the American jail would disappear to-morrow, leaving only a modest place of detention for persons awaiting trial.

The care, custody and treatment of convicted offenders is necessarily the business of the largest unit of government, the state, even as their trial and conviction is the affair of the whole people. Splitting up the authority among local units results in chaos so far as standards of action are concerned.

However the local units are permitted to do the administering, the state must do the planning and the directing of policy. The day is fast coming when the present anomalies of supreme county and other local authority will yield to a coherent state system of corrections in each of our state jurisdictions. It will then be possible for the first time to approach uniformity of practice throughout the Union.

Elements of a Sound System of Corrections—Viewing the development of present-day methods in the care, custody and treatment of law-breakers, and bearing in mind the quick march of economic advance creating stupendous problems of urban life, straining the power of the individual to adjust himself to kaleidoscopic change, the following points are submitted as essential elements in the sound system of corrections for the future.

As the true function of a court is that of a tribunal of justice, seeking out the law and applying it to the issue submitted; the placing of administrative burdens upon our court should be avoided: and as the care, custody and treatment of persons convicted of offenses against the law are administrative, not judicial functions,

1. *The criminal court of the future should commit the convict, within the requirements expressed in statute or found in the common law, to the state government by some one of its executive departments. All else that happens to the convict should be done independently of the court, save only the rehearing of issues involving release where the same involve a variance of the terms of sentence.*

As the breaking of law injures not a subdivision of the state alone but the whole people as well,

2. *The state government should have custody of all law-breakers, the county functioning only as a judicial unit. All prisons, jails, reformatories and other places of incarceration for convicts should therefore be owned and managed by the state.*

As the problems of penology are so voluminous and so weighty in every jurisdiction of any consequence,

3. *The responsibility for the state's system of corrections*

*should be lodged in a separate state department with an expert penologist at the head. This should be a part of the executive branch of the government.*

Modern classification demonstrates the need of dealing with juveniles on a correctional but non-penal basis, wherefore

4. *Juvenile delinquents should be housed in institutions apart from adults and should be cared for in separate institutions by sex.*

The effects of probation are so far demonstrated as to justify the claim that

5. *The penal system of the future must look to the crime as nothing more than evidence of the make-up and condition of the criminal, its whole effort being directed to the man rather than to his offense; to the end that he may be reinstated in society as a burden bearer like the rest of us.*

Modern practice having shown beyond peradventure that fixed terms relate to punishment rather than to reformation; and that reformation demands a task sentence rather than a time sentence,

6. *The system of the future must employ the indeterminate sentence to the fullest extent practicable, placing the time of release on a basis of rating earned by conduct.*

Experience discovers the folly of commitment to servitude for all offenses. By a friendly case work service to most offenders after sentence, commitment is found to be unnecessary to protect society from their depredations. Consequently,

7. *The first great buttress of the method which operates upon the delinquent rather than his delinquency and uses the indeterminate principle in his sentence, should be an adequate system of probation, seeking by a qualified liberty extended to the delinquent after a finding of guilt to readjust him to his social surroundings on a law-abiding basis without the necessity of sending him to an institution.*

It is the height of folly to imprison a man who already is unable to get along peaceably in the world and at the end of his term throw him back without ceremony or friendly help into the conditions from which he came. The answer to the puzzle is that

8. *The indeterminate sentence should be buttressed by a rational and efficient system of parole, in which careful study of the man together with preparation for his release have gone on in the institution before parole; and in which able, friendly supervision is afforded him in the making of his readjustment to life after release.*

The great salvation of mankind is purposeful occupation. No more cruel punishment could society inflict upon the individual, however deeply offending, than to commit him to an extended term of idleness, thus depriving him of his already small potentiality for labor. Consequently

9. *No institution for the custody of able-bodied persons should be allowed to exist without a rational and effective system of labor. Such work should seek to provide vocational training where practicable and should strive to recoup society so far as expedient for the cost of maintaining the institution. In this connection a system of wages to prisoners as an inducement to will power and ambition should be instituted.*

Purposeful labor is not practicable without a market or other outlet for the product. It is to the best interest of society as a whole that no individual in it lie idle at the expense of all the rest. Hence

10. *The institution should aim first for the supply of its own needs. Second, for such market as other institutions and branches of government may afford. And third, it should manufacture for the open market. The contention of organized labor is fallacious and short-sighted. Such a line of approach to the work system, when coupled with the physical needs of prisoners, indicates the farm colony with outdoor labor and outdoor industries as the finest type of the prison of the future.*

## FOR THE STIMULATION OF THOUGHT

1. Are we delivering our individual liberties over into the hands of a few specialists by placing it within the power of the psychiatrist to find defect and so advise the court, in consequence of which the offender may be committed for life as a defective even though his offense may have been petty? Is classification the outstanding need in the treatment of criminals? How can we secure it without thorough mental examination?

2. Fifty years ago a fourteen-year-old boy was convicted of a revolting murder and sentenced to be hanged. Sentence was subsequently commuted to solitary. Though prison authorities, encouraged by a changed public sentiment have taken him out of complete solitary, this prisoner is still serving. He has been examined by numerous specialists of note and is declared to be neither insane nor feeble-minded. Some found him to have a psychopathic personality. The case is sometimes cited as an example of the unnecessary rigor of the criminal law. How would modern classification have handled this case? Should this boy have gone on probation? Should he have been placed with the defective delinquents on the ground that he had a psychopathic personality?

3. How far should prison records go in securing and recording data regarding the prisoner's dependents? Should his "folder" contain a complete case history together with all the data from his physical and mental examinations, and the usual narrative of treatment, as in a case work agency record?

4. A state desires to establish a new state's prison. It acquires a large tract of undeveloped land and sets out, at an anticipated expense of millions of dollars to set up the plant. It has some prisoners in the old institution who are available and who are used for the rougher labor. In the county jails of the same state are many hundreds of prisoners who before commitment were workmen at just such labor as the state needs for this new enterprise. These men are wasting time at unproductive labor set up as a therapeutic measure. They are costing the community more than $1.00 per day apiece for maintenance. Should the system of corrections be so far unified under state authority as to render this waste labor available for state use? If this were done would the tendency be to forget the interests of the prisoner and to think only of how much work could be got out of him?

Labor interests contend that all the work on the new state's prison should be performed by free labor at the market price. These same interests have already secured by legislation the short working day on all public work. How far are these demands meritorious in the light of the welfare of the whole public, including labor? Various psychologists contend that prisoners should receive wages for their productive labor. Is this proposition sound? If so, should wages be paid for that portion of the convict's labor only which represents a value or surplus over and above the cost of his maintenance by the community? The public is already supporting many convicts' families out of poor relief funds. If it pays wages should it withdraw that much from the poor funds so paid and pay the wages over to the families? Or should it pay them to the prisoner and let him use his free choice as to what he will do with his money?

5. If government exists only for the purpose of maintaining justice in human relations and for performing those services to the whole community which can be secured only by joint action; and if the

community is to be defined as the population-swarm concerned in the question calling for the definition; so that every invention reducing time or eliminating space, extends the boundaries of the community; is not the day fast coming when for all general interests at least, the sovereign independence of small governmental units like municipalities and counties must give way to state-wide control? If the airplane becomes as useful and as common in the future as the railroad train and the automobile are to-day, will not such a forfeit of local sovereignty extend to entire states in large degree just as it now appears to extend to the town and the county?

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## CHAPTER XIX

## TREATMENT OF THE INSANE

Human society functions through the competence of its constituent members. Their individual ability to earn bread; to breed and rear children; to understand those race-cultural rules of conduct which make up the law; to reach out to higher intellectual attainment in an appreciation of the arts and sciences—these are the criteria of valid citizenship. With them a self-governing nation may become all-powerful. Without them popular sovereignty is an illusion and government by the people is undone.

In two important particulars we have examined defects in this individual competence, both of them indefinite in nature and broadly inclusive. The first described public dependency with all its conglomerate of poverty, of pauperism, of physical invalidity and mental weakness. The second considered the law-breaker in his infinite variety of character parts,—vagrant, gang leader, dull-minded tool, psychopath, and plain villain. We shall now make a closer approach to that vast army of unfortunates who recruit so largely the ranks of public dependents and criminals,—the insane and the feeble-minded. Insanity is the manifestation of a diseased condition of the brain. It is the outward appearance of a variety of physical ailments and conditions, which impair or destroy the victim's competence as a member of society.

Present Numbers Under Care in the United States—In the year 1923 the United States census enumerated 267,617 insane persons in public hospitals, a ratio of 245 in every 100,000 of the general population of the country. A total of 89,455 were admitted to care during 1922. These totals represent, of course, only those victims of brain diseases who have been declared by a circumspect legal process and upon complaint—usually of relatives and loved ones—gravely brought, to be a danger to themselves and to others if left at large in

the community. They represent therefore only an index of the extent to which modern man is beset by these diseases. Unfortunately, because treatment of the insane, as such, is of very recent date, it is impossible to tell how much of the present high incidence of insanity is due to increased care and more inclusive registration and how much may result from an absolute increase in the condition. The best opinion inclines to the view that much of it is due to the latter cause.

In the census of 1920, the native-born whites in our continental population totaled 85.5 of all white persons. This left only 14.5 per cent. foreign born. Yet among the 244,968 whites in our institutions for the insane January 1, 1923, there were but 169,296 or 69.1 per cent. of native born. A total of 69,984 or 28.6 per cent. were foreign born. A further 2.3 per cent. were of unknown birth, most of them presumably foreign born. To put the situation in another way, the foreign born in our institutions for the insane showed a ratio of 513.9 per 100,000 of the foreign-born whites in the general population. The native-born whites showed a corresponding ratio of but 159.8 per 100,000 in their own group. This excess of the foreign-born ratio held true for every state in the Union, going as high as 849.7 in Oregon and as low as 147.9 in New Mexico.

The ratios for new admissions in 1922 are not greatly different. Within the several nationalities of the foreign born, the Irish males showed a ratio of 838.3 per 100,000; Irish females 1,086.1.

Statistics of the Insane in England and Wales—On January 1, 1925, the total number of notified insane persons under care in England and Wales was 131,551. Of these, males comprised 43.9 per cent., females 56.1 per cent. The English ratio is 348 insane persons in every 100,000 of the general population. Thus in old, thickly populated England, one person, on the average, in every 287⅓ of the general population is an inmate of an institution for the insane; while in the newer, more sparsely populated America this incidence of mental disease is only one in every 408. That this discrepancy is more apparent than real is hinted at by two facts apparent on the face of the statistics. According to the eleventh report of the Board of Control of England and Wales, for the year

1924, there has been a positive decrease of 892 patients in the total number of insane persons under care during the past decade. By comparison, the United States census of 1880 reported 40,942 insane persons under care. By 1890 this total had jumped to 74,028. In 1904 it was 150,151. In 1910 it had advanced to 187,791; and in 1923 to the number previously stated, 267,617. These two facts taken together must mean that the English ratio represents a probable norm in an old thickly settled urban community; while the American figures mean only that we are still in process of classifying and providing sufficient housing for the insane, and that the normal ratio for the United States probably is much higher than the reported 245 in the hundred thousand.

Some Causative Factors—The record of the insane throws much light upon those problems of human behavior which loom so large in the science of public welfare. In the Federal census classification for 1923, 43 per cent. of the whole number of insane inmates were tabulated "dementia præcox"; 15.3 per cent. as "manic depressive"; 5.1 per cent. as "senile"; and 4.49 per cent. as "mental deficiency"; "general paralysis and alcoholic psychosis" totaled 6.3 per cent.

In Massachusetts on October 31, 1924, there were 17,404 insane persons under care. During that year, 2,932 new cases had been admitted. Of these new cases, 17.46 per cent. were suffering from psychoses resulting either from syphilis or alcoholic poisoning. Foreign-born persons, who approximate one-third of the general population of the state, totaled 43.3 per cent. of the new admissions. Urban districts furnished 90.65 per cent. of the whole.

Now and then a study of some special district throws much light on the social texture lying beneath the general statistics of the insane. In an unusually thorough survey of Nassau County, New York (Long Island) made in 1916 under the direction of Dr. A. J. Rosanoff of Kings Park State Hospital and published by the National Committee for Mental Hygiene (Publication No. 9), a group of 1,592 mentally abnormal persons was found in a population of 115,827, a ratio of 1,374.5 per 100,000. Not all of these were insane. The actual number of persons per 100,000 of the population for

the following psychoses or conditions was discovered: syphilitic psychosis, 12.9; cerebral arteriosclerosis, 15.5; senile, 28.5; alcoholic, 29.4; recurrent, 41.4; chronic, without deterioration, 43.2; recoverable, 44.0; epilepsy, 62.2; chronic, with deterioration, 119.1; disorders of uncertain nature of etiology, 424.8; arrests of development, 546.6. In other words, one person in every 72¾ was found to be mentally abnormal. This analysis takes no account of 583 other persons of doubtful normality found in the same population.

A sociological classification of these abnormals revealed 11.9 per cent. truants and school retards; sex immorality, 7.3; criminal tendency, dependence and vagrancy, 22.7; inebriety, 20.1; drug habit, 0.3; domestic maladjustment, 0.9; medical cases and others, 26.6. Those with no maladjustment made the small percentage of 10.2, that is to say, only 163 abnormal persons in a group of 1,592 could be classed as without maladjustment and presumably therefore not constituting a social problem. Many of the maladjusted were found out of adjustment in more than one particular. If all these secondary problems be added up, the 1,592 abnormals would have appeared as a total of 2,294 cases.

The question asked in the Nassau County survey was not "What is the percentage of 'insane' or 'feeble-minded' persons in the population?" but rather, "What instances of social maladjustment, sufficiently marked to have become the concern of public authorities, are, upon investigation, to be attributed mainly or in large measure to mental disorders?" The devastating effect of mental disorder upon the body politic is all too clearly revealed.

Students have long known that city life, with crowding and congestion in all the details of living, constitutes an increasing strain upon the human mechanism, and that the older the community and in particular the more completely it is urbanized, the greater the ratio of the insane. The predisposing causes of cerebral disease are themselves largely the results of crowding in population-swarms.

Alcoholic poisoning is a fruitful source of insanity. It is greatly fostered by city life. There the careless and the dull-normal can drink themselves to death with great facility, failing

frequently from the top down. The open saloon has been the efficient instrument for speeding this process.

The saloon and the brothel never have been far apart. Commercialized vice in the past has found its chief assurance in the sale of liquor and the producing of states of intoxication. It is probably correct to assert that commercialized vice as such cannot thrive without the liquor traffic. With prostitution is introduced a great—probably the greatest—single environmental cause of insanity, syphilis. Though many persons contract this disease in complete innocence of wrong conduct, it is nevertheless spread abroad and kept flourishing by prostitution. The extent of general paralysis, a frequent condition resulting from this disease, is great, in view of the large numbers of syphilitics who are admitted each year to our institutions for the insane.

The frowning shadow of heredity in mental disease darkens always the page of man's mental accomplishments. It is the subject of constant study and research, thus far with the most meager results. That the taint of unsound strains, sent into colonial America to relieve the mother country, is still biting like acid into the competence of our citizenship, there can be no doubt. Conditions in Massachusetts and New York are attributable to this historical encouragement in no small degree. Though no data exist by which these transplanted strains can be followed, the intensive study of Nassau County previously referred to did discover 1,367 doubtful and abnormal individuals occurring in 355 family groups which contained from 2 to 56 "doubtful" and "abnormal" cases each, indicating clearly the probable persistence of any defective strain, granting its economic opportunity and assuming its fecundity.

Historical Attitude Toward the Insane—Insanity as a recognized condition among human beings is as old as historical record: as a disease it is as new almost as the science of psychiatry. In all times men have been found distracted and their condition has been an object of wonderment. Lacking a factual basis on which to define it, and being under that compelling human necessity which drives us to find a cause for every phenomenon, however inadequate, man through a long

age of darkened perception turned to his imaginative world of belief for a solution. Here was a mystery: by mystery must it be solved. It is probable that long before the three gospels related the casting out of the legion of devils from one or two lunatics who dwelt in the tombs, men had believed that the weird conduct of insane persons was caused by devils. Thus it has come about that the innocent victim of brain disease has through all the ages been the outcast of men, neglected, abused, fed in very peril of seizure by the foul fiend, chained by the edict of government, and exhibited for profit and made to perform tricks by the more venturesome. Let the solution of any earthly phenomenon become the tenet of a belief or a religion, and it will persist long after the light of reason has shone in upon the illusion.

Hippocrates taught that mental disorders arose from bodily causes and associated them with diseases of the brain. He was against superstitious explanations. Thus though he knew little about the brain he nevertheless came near to the truth that psychoses are due to diseased conditions of the brain. Galen, after him, recognized the principal psychoses but appears to have had no idea of their origin. Thus in ancient times we have such a glimmer of understanding as was not approximated again until the beginning of the nineteenth century. The intervening centuries, intensified through the period specifically styled the Dark Ages, were dominated by superstitious cant and a theology sterile either of curiosity or reason. In its contemplation, the mental irresponsibility in the scheme of Hippocrates became demonomania. Man sought the causes for bodily and mental states not in himself but out of the purposes and the meticulous attention of an ubiquitous God. Insanity, especially a condition in which the victim raved and tore his hair or sought to do bodily injury to himself or others, must in such a philosophy arise from that antithesis of all good, the devil. Demonomania, especially applied to "epidemic witchcraft," was the name for affliction arising as much out of the superstition of the people as out of the condition of the victim. The condition thus described, says Glueck, "was in those dread days largely fed by the misinterpreted symptoms of the un-

fortunate hystericals; and whatever the Greeks and Romans had contributed to mental pathology gave way to ignorance and superstition." [1]

Because of this demonstrated presence of the devil, the favorite treatment for distracted persons was exorcism, and where the demon was obstinate the victim was burned at the stake. The wretched energumens were not indeed deprived of a home in the church but during services must occupy the porch along with lepers and other defiled persons. Early modern times commuted this punishment to the less humane but perhaps less irrevocable practice of confinement in chains, a practice by no means banished from the earth in this enlightened present, and less than three-quarters of a century out of date in the highest types of civilization we know.

Thus medicine for a thousand years lay supine and practically dormant, charmed by the frowning tenets of a mystical philosophy. As late as 1749 we find the medical faculty of the University of Würzburg endorsing the death sentence pronounced upon a witch by the theological faculty of that same university.[2]

Legal Attitude Toward Mental Disorder—In this unscientific state of thought it is surprising that the law came as near to the truth of mental responsibility as it did. As early as Edward I insanity was admitted as an excuse for crime. But confiscation of the property of the convict was practiced for a half century longer. By 1327 insanity as a defense was made complete, but the resulting practice did not support a finding of "not guilty." On the contrary, the accused if found to have committed the act was found guilty thereof. A special verdict was returned finding him mad; whereupon the king pardoned him. As early as Edward II (1307-21) a distinction was recognized between lunacy and idiocy, the statute *de Prerogativa Regis,* passed in that reign, having set up the jurisdiction over these two classes of persons specifically named.

Bracton, writing in the thirteenth century, defined an insane

[1] *Mental Disorder and the Criminal Law.* By S. Sheldon Glueck. (Boston, Little Brown & Co., 1925), p. 124.

[2] Cited by G. W. Jacoby in *The Unsound Mind and the Law,* Funk & Wagnalls, N. Y., 1918.

person to be "one who does not know what he is doing; who is lacking in mind and reason; who is not far removed from the brutes." [3] From this source came the later "knowledge" and "wild beast" tests into the English law.

Fitzherbert, a judge of Common Pleas, early in the sixteenth century defined an idiot to be "such a person who cannot account or number twenty pence, nor can tell who was his father or mother, nor how old he is, etc., so as it may appear he hath no understanding of reason what shall be for his profit, or what for his loss. But if he have such understanding that he know and understand his letters, and do read by teaching of another man, then it seems he is not a sot or natural fool." [4]

This ancient judge of Common Pleas had the temerity to offer illustrative measurements which he might have foreseen would be copied as actual tests; but at least he had the God-given wish for concreteness and definition. Early in English criminal trials, then, the *mens rea,* or *guilty mind,* became confused in legal thought with a notion that a knowledge of good and evil is basic in the determination of responsibility. It survives to this day in the rule that the defendant is excused if he did not at the time of committing the act know the difference between right and wrong.

Two major fallacies resulted from that rule, namely, the mistake of assuming that "right" and "wrong" are terms of absolute definition, and willful oversight of the well-known fact that insane persons commit acts well knowing them to be "wrongful," but in the doing of which they find themselves compelled by an impulse or force of will, set up by their diseased condition of brain, against which they seem powerless.

The light of reason has dawned ever so slowly upon man's understanding of his own distractions. It was as late as 1800 that the concept of the "delusion" was introduced into the legal test of insanity by Erskine, the great English advocate, in Hadfield's case. He brought back the lost concept of the respon-

[3] See Wharton & Stillé, *Medical Jurisprudence,* p. 510.

[4] Cited in Hawkins *Pleas of the Crown,* Vol. I, p. 2, footnote. For primary reference to this and many other sources of definitions in this chapter I have depended largely upon the admirable chapter by Glueck on the "History of Legal Tests" (of insanity in the criminal law) in *Mental Disorder and the Criminal Law,* above cited, *vid.*

sible, rational mind to a degree by declaring that "delusion . . . where there is no frenzy or raving madness, is the true character of insanity." [5] Even though modern science finds this declaration too narrow to cover the whole truth, here was an epochal advance in the legal conception of insanity. Still the courts clung to complete lack of knowledge of right and wrong as a test of irresponsibility for criminal acts, and to-day we find ourselves with a variety of tests. The basic concept of the *mens rea* in the doing of criminal acts is hopelessly confused with the idea of specific tests which include complete loss of understanding and memory; complete lack of knowledge of what the actor is doing in the commission of the act; approximation in mental perception to the condition of brutes; partial dementia, covering only the act committed or similar acts; total dementia, to the extent of lacking the understanding of a fourteen-year-old child; delusions as to the act committed; and finally, the more modern idea of "irresistible impulse." Through the illogical fog of this historical waste runs, nevertheless, a thread of basic reasoning, connected most intimately still with the concept of the *mens rea*—the guilty mind. As stated by Glueck, it is this that "to constitute an illegal act criminal, the actor must have had that condition of mind possessed by the person of ordinary intelligence and ordinary mental health." And he adds, by way of interpretation, "This means volitional emotional health as well as cognitive intellectual capacity." [6]

Treatment Prior to the Middle of the Nineteenth Century—Science to-day reveals in all its nakedness this folly of the ages, by which the disordered mind—tormentor of itself—is further persecuted in the interests of a humane Deity. Delivered by the light of reason from the spell of superstition, we now recognize insanity as mental sickness, caused by a disease of the brain, as much a physical fact as a sore foot. Once grant the premise that the trouble is mental sickness and the way toward humane care and remedial as well as preventive treatment is opened. It is the purpose in this chapter

[5] 27 How. St. Trials, p. 1314.
[6] Glueck, p. 160.

to trace the development of methods of care and treatment of the insane sufficiently to show the thread of growth in public welfare service in this field and finally to state such standards and principles of care and treatment as have thus far emerged in practice.

As the insane were in league with the devil they were therefore enemies of human society. Because he had "made and signed the devil's book with blood, and given himself, soul and body, to the devil," he must therefore be outcast. The short way was to put him to death. Latterly this was done by the comparatively humane method of hanging, but aforetime the victim, after a long process of torture, in which he was maimed in the iron boot or broken on the wheel or pressed to the point of death was finally burned alive. No punishment was too severe for the children of darkness, they of the "wicked and diabolical covenant with the devill." [7] Thus while society took account of their perversity it did not recognize their condition.

It should be said that numberless of the insane, not violent and passively irrational, were never pursued by the law. These were the poor dements who were the special care of the exorcists. But wherever a crime was committed or wherever a claim was made that some poor psychopath was bewitched, the law took unrelenting account of mere suspicions pointed against such victims.

The first method of treatment, then, was on all fours with the earliest methods of treating crime. The accused was put to death with short ceremony. Where acts of public offense were not alleged, the relatives were required to look after all disordered persons. Thus in early Roman law we find no instance of special institutional care for the insane. We do find an ordinance of Rome requiring householders to guard their own defectives. As early as 1547 a former convent of Bedlam (Ireland) was converted into an asylum for insane persons. This of course was under the direction of the church. It was two hundred years later that the first public asylum for the

[7] "A man also or woman that hath a familiar spirit or that is a wizard, shall surely be put to death: they shall stone them with stones; their blood shall be upon them." Lev. 20:27. "Thou shalt not suffer a witch to live." Ex. 22:18.

insane was established in St. Luke's Hospital, London. Broadly speaking, the public care of the criminal insane was not separable from the treatment of normal criminals, and the treatment of the non-criminal was merged in the care and disposition of public dependents of all other varieties. Down to the most recent times, therefore, we should expect—and this is the fact—that wherever the public took notice of the insane at all, the violent cases would be found in jails and prisons, and the harmless in the almshouse. In the United States many insane persons needing comparatively little restraint have been confined in jails for want of other provision, and many needing personal safeguards have been chained in almshouses or on almshouse premises.

Our early almshouses were frequently almshouse and workhouse combined. The insane not being recognized as a special group for separate treatment were housed in both ends of the workhouse-poorhouse population. In 1834 the Boston House of Industry contained 528 persons, 61 of whom were either insane or idiotic.

Massachusetts in 1676 delegated to the selectmen of the several towns the care of the person and the estate of the dependent insane. In 1693-94 the new Province Government enacted that "where such person (as shall be incapable to provide for him or her self or . . . shall fall into distraction and become *non compos mentis*) was born or is by law an inhabitant, the selectmen or overseers of the poor of the town or peculiar shall be required to take effectual care and make necessary provisions for the relief, support and safety of such incompetent or distracted person, at the charge of the town or place where he or she of right belongs, if the party has not estate," etc.[8] This meant that the insane would be cared for in the almshouses where not charged with crime and in the jails when convicted or accused.

In 1797, one hundred years after this first important enactment, the insane as a special group came for the first time to legislative attention, not, however, with much prospect of improvement in their condition. In that year it was enacted that

[8] Acts and Res. Prov. Mass. Bay, 1693-94, p. 51. Pub. by the State, 1869.

when it appears that a person is "lunatic and so furiously mad as to render it dangerous to the peace and safety of the good people, for such lunatic person to go at large," he may be committed to the house of correction, "there to be detained till he or she be restored to his right mind or otherwise delivered by due course of law. And every person so committed shall be kept at his or her own expense, if he or she have estate, otherwise at the charge of the person or town upon whom his maintenance was regularly to be charged if he or she had not been committed: and he or she shall if able be put to work during his or her confinement." [9]

In 1736 appears the first reference to a statutory method of determining insanity. The judge of probate upon petition could order an inquisition by the selectmen, final decision to include the approval of the court. In 1784 complete provision for guardianship of the insane was set up.

When the Massachusetts General Hospital was incorporated in 1811, a provision was included reserving to the state the right to send "lunaticks" chargeable to the Commonwealth (i.e., unsettled dependent poor) to that institution, not to exceed thirty in number, to be supported there at state expense.[10]

A separate department to be known later as the McLean Asylum, was set up in 1818. Massachusetts set up her first state institution for the insane in 1834. At first the support of all patients not privately arranged for was to be borne by the cities and towns. In 1835 this burden was transferred to the state in all unsettled cases.

Thus was made a fair beginning in the recognition of the insane as a group calling for special care and treatment. In 1842 those committed to the house of correction were required to be segregated in buildings separate from other inmates.[11]

The history of other colonies and states was on all fours with that of Massachusetts. Rhode Island set up her first institution in the form of the Butler Asylum in 1847, though the Dexter private hospital limited to Providence cases had been established in 1828. In Connecticut the well-known Hart-

[9] Acts Prov. Mass. Bay, 1797, Ch. 62.
[10] Laws of Mass., 1811, Ch. 94.
[11] Mass. Laws, 1842, Ch. 100.

ford Retreat was opened in 1824, and formed the direct influence for the creation of the Brattleboro Retreat in Vermont (1834), and the Worcester State Asylum in Massachusetts (1834). New Hampshire opened the New Hampshire (State) Asylum for the Insane in 1842.

New York Provisions—New York, after a long history of confinement of her insane in almshouses, workhouses, and houses of correction recognized the violently insane in a statute similar to that of Massachusetts. In 1788 she enacted that "whereas there are persons who by lunacy or otherwise are furiously mad and so disordered in their senses as to be dangerous to go abroad, it shall be lawful for two or more justices of the peace to cause to be apprehended and kept safely locked up, such persons in some secure place, and if necessary to be chained there, if the place of their legal settlement be in the city or town within that county."

In 1806 the New York Hospital was authorized to build a wing especially for the care of maniacs. In 1827 came a genuine step in the form of a measure providing that "a lunatic shall not be confined in any prison, jail or house of correction, or confined in the same room with any person charged with or convicted of any criminal offence." Not until 1842 did this state legislate for a state asylum. New Jersey followed with her first state institution in 1848.

Pennsylvania Provisions—The Society of Friends, in Pennsylvania, opened an institution in 1811 for the care of such of their members "as may be deprived of their reason." The Blockley Almshouse at Philadelphia took care of the insane in that district. In 1850 a separate building was built for them.

Early American experience thus shows practically no points of difference. The insane if well off were immured and watched over by relatives. If poor and dependent, they were not differentiated from the indoor poor. The almshouse was their normal place of abode. If violent they were arrested and committed to the house of correction or the jail where they were kept in cells or in chains. But with the coming of the first separate institution there began to grow up a body of opinion having its roots more in human sympathy than in

scientific understanding of mental disease. Public ideas and public opinion were ripe for a major reform. All that was needed was the humanist advocate of extraordinary power for leadership, and fanatical zeal in the cause. Such an one appeared in the person of Dorothea Dix.

Work of Dorothea Dix—In 1841 Miss Dix undertook the teaching of a Sunday-school class in a Massachusetts house of correction. This brought her into contact with a group of insane prisoners who were confined in very cold cells. From this beginning she became a crusader in the interests of more humane treatment of the insane. In 1843, after a careful personal inspection of jails and almshouses in Massachusetts, she submitted a memorial to the legislature exposing the cruel conditions under which the demented were confined. Judged by later inspections and by the testimony of other reformers, this Massachusetts memorial sets forth faithfully the kind, the degree of neglect and the heartless attitude in the local care of these poor outcasts before an enlightened system of state custody and treatment was inaugurated.

Miss Dix found the violent dements in chains. The others she discovered in varying degrees of neglect. It is probably true that more sympathy would have been extended to them had it not been for the lurking belief that they were possessed, for which reason too close association with them might infect their keepers. A single memorandum, typical of the worst sort of neglect she found, will suffice to illustrate conditions in early local care:

"Late in December 1842, thermometer 4 degrees above zero; visited the almshouse, neat and comfortable establishment; two insane women, one in the house associated with the family, the other 'out of doors'. . . . I asked to see the subject who was 'out of doors'; and following the mistress of the house through the deep snow, shuddering and benumbed by the piercing cold, several hundred yards, we came in rear of the barn to a small building, which might have afforded a degree of comfortable shelter, but it did not. About two thirds of the interior was filled with wood and peat; the other third was divided into two parts, one about six feet square containing a cylinder stove, in which was no fire. . . . My companion uttered an exclamation at find-

ing no fire, and busied herself to light one. . . . 'Oh, I'm so cold, so cold,' was uttered in plaintive tones by a woman within the cage, 'oh, so cold, so cold!' . . . Here was a woman caged and imprisoned without fire or clothes, not naked, indeed, for one thin cotton garment partly covered her, and part of a blanket was gathered about the shoulders; there she stood, shivering in that dreary place; the grey locks falling in disorder about the face gave a wild expression to the pallid features; untended and comfortless; she might call aloud, none could hear; she might die, and there be none to close the eye. . . . Pretty soon I moved to go away. 'Stop, did you walk?' 'No.' 'Did you ride?' 'Yes.' 'Do take me with you, do, I'm so cold. Do you know my sisters? They live in this town; I want to see them so much; do let me go!' and shivering with eagerness to get out, as with the biting cold, she rapidly tried the bars of the cage." [12]

Dorothea Dix was the direct cause of the embarking by Massachusetts upon what finally became a system of exclusive state care of all the insane and the mentally defective. From Massachusetts she went to Rhode Island, and from there to New Jersey. Altogether she crusaded in twenty states, in the Federal Congress and in the Parliament of Great Britain. Everywhere she met with success. Though the president of the United States vetoed the measure for an allocation of public lands to the benefit and care of the insane, which she had supported through Congress, the awakening of public opinion through her campaign was a far more substantial result than mere legislation could have been. Altogether thirty-two institutions for the insane were either founded or greatly enlarged as the result of her efforts.[13]

It is to be noted that this was not a movement toward expert medical treatment, though that was one of the ultimate results. Nor was it a movement born of new knowledge of mental diseases. It arose purely out of sympathy, and demanded in the name of humanity some less cruel method of care and restraint. It assumed that local authorities would be always about the same in their quality of mercy and intelligence—a wise assumption in all phases of institutional care of human

[12] Legislative Pamphlets, Mass. State Library, Vol. 120, No. 1, pp. 19, 20.
[13] *Life of Dorothea Lynde Dix.* By Francis Tiffany, 1890, p. 361.

beings—wherefore the remedy was to lodge responsibility in the state government.

Public Asylums—The public asylum for the insane began as a place of congregate custody, a stage in which it still lingers to some degree. The first public institution in the United States was established at Williamsburg in Virginia in 1773. Like its followers among state establishments it afforded nothing new in the way of medical treatment. The insane as referred to in the statutes setting up these depositaries, were those violently mad persons who needed immediate restraint, and the institution designed for them was in contemplation as in fact a slightly more tolerable aggregation of cells, cages and congregate wards for restraint. At Williamsburg medical treatment was limited to a non-resident physician who visited the institution but had no responsibility for its management.[14] The asylum was administered by a keeper. The first provision at the Pennsylvania Hospital consisted of cells located in the basement and intended for custodial cases only. The poor dement in these first "hospitals" sat confined in a cell, often restrained with leather-muffs or irons, and in this predicament he too often submitted to the abuse or neglect of a fortuitously chosen staff of rolling stones who were his attendants.

Persistence of Local Care—As might be expected in a process of transition from local to state care, the vested interests of town and county have hung on long after local care had ceased to be a part of the reasoning of the system. In the case of the insane the political strength of the county soon asserted itself. To remove inmates from the county jail and the poor farm tended to reduce operations there, hence the strong opposition of county politicians. In some states state care came about only on a compromise basis. In New York a number of special county institutions for the insane sprang up because of the new policy of special treatment of this group and the inadequacy of the state's provision for it. The same situation arose in New Jersey. In Pennsylvania the state hospitals quickly became overcrowded. The result was the licensing of county institutions for the care of their own de-

[14] *Institutional Care of the Insane*, United States and Canada, H. M. Hurd, Editor, 1916, Vol. I, p. 93.

pendents at state expense, a vicious practice which has given rise to several county asylums which yield revenue to the county. It is a plan which multiplies care without improving the treatment.

Wisconsin undertook a definite policy of classification by which recent and dangerous cases were received by the state hospitals, the chronic insane remaining in the county which was empowered to build an asylum of its own. The state at the same time provided a subsidy to the counties for care rendered.

The inevitable result of a mixed system of state and county care is the retardation of standards in the state institution by reason of the clog put upon independence of management of the whole problem, and a holding back of progress on the part of the local institution through the persistence of the old idea of pauper support instead of hospitalization. The insane cared for by a county are for the most part stored for safekeeping. Classification and intelligent care are lacking. The observer has but to examine the exclusive state care system of Massachusetts in comparison with the mixed system of Pennsylvania to note the difference in values obtained by equal effort and parallel intent.

New York escaped from the county system only after three searching and caustic reviews of the inadequacies and abuses of county care. Governor Fenton, in transmitting to the legislature the third of these studies, pointed out that in fifty-three counties there were at that time (1865) a total of 1,345 lunatics confined in poorhouses, nearly all of whom were incurable, many having become so through inefficient care and treatment. "The time has come," he said, "when legislative provision for them should be made. The propriety of establishing an institution for incurables—an institution that shall relieve county authorities from the care of the insane—should be deliberately considered." "More than one-fourth of the number of insane are capable of some kind of labor. To what extent that labor, organized and systematized, might be made productive in the maintenance of an institution under well-directed medical superintendence is likewise worthy of consideration."

The result of this recommendation was the Willard State Asylum for the Chronic Insane. It was opened in 1869. The basic purpose here was to take the care of the insane from county authorities and place it under a comprehensive state system. In carrying it out, the Willard plan ran afoul of one difficulty that is basic in the philosophy of treating mental disorders, namely, the impracticability of separating the acute from the chronic insane by any true dividing line in custody or treatment. In many instances it is impossible to tell to which class the patient belongs. In the obvious cases relegation to the ranks of the chronic destroys hope and tends to set up a group of terminals for whom devotion and ambitious treatment invariably lag. Because of this impracticability of administration, the Willard Asylum rapidly became a receptacle for acute as well as chronic cases.

This institution is worthy of further mention because it represents the first important departure from the castellated type, or congregate, plant. At approximately one-third of the usual expense a group of cottages and supplemental buildings was set up and found to be admirably adapted to the uses intended. This departure has formed a starting point for numerous developments elsewhere and marks an epoch comparable with the original separation of the insane from the aggregate of the public poor.

The Colony System—Though the absolute classification of chronics from acute cases is impracticable, the development of farm colonies for the chronic and certain of the acute cases as an adjunct of the hospital for the treatment of all the insane has been found highly practicable and helpful to the patient. The Kalamazoo State Hospital is perhaps the first important development in this direction. By the acquisition of a two hundred and fifty acre tract some three miles from the parent institution, a dairy farm was established and chronic patients housed there in modest barracks to do the work. Subsequently another tract about two and one-half miles from the main plant in another direction was acquired for general farming and improved by similar housing quarters. This institution with such outdoor advantages provides refreshing labor for its patients, secures ample food supplies grown on the premises, and has

control of a lake to which the lands are littoral so that the patients enjoy boating and fishing. Figuratively speaking, these contented souls are the same wretches who peered between the bars of a different century, reaching like animals for the crusts which passers-by might bestow upon them.

Massachusetts with her crowded urban centers separated by intervals of brushwood and hard scraggy terrain has been a pioneer in advancing the colony system. Twelve of her state hospitals cover 7,335 acres of land.[15] One of these, the Gardner State Colony, comprises a tract of 1,848 acres, exceeded only by the School for the Feeble-minded at Waltham, in its Templeton extension, with 1,993 acres. Upon these exclusive farms, carved by the patients out of stubborn wilderness, she now places a cash value of more than one and a half million dollars, and rates her total of improvements at nineteen millions. Her method of establishing an institution at the present day is the selection of a tract of wild land, and the setting up of temporary barracks for a crew of inmates coming from one of the existing institutions. Gradually the elder bush and the bowlders yield to steady recreational labor until in time the whole is reclaimed for tillage, mowing and woodland, and buildings erected chiefly also by inmates, fill out the limits necessary to housing and treatment.

In the colony, with therapeutic occupation largely out of doors, we have the highest type of institutional care for the insane, since it affords the widest opportunity for curative measures.

Treatment—In the first asylums set up in America the insane were confined in cells or cages often heavily shackled to prevent violence. There appears to have been an early notion that state hospitals would quickly cure the aberrations and that patients might soon be returned in considerable numbers to their homes. Within a few years, therefore, when hoped-for cures did not materialize, these same state institutions became inadequate to house the increasing numbers. Some of them, as we have seen already, unloaded the chronics

[15] The State Infirmary and the State Farm, being mixed institutions, are omitted from this acreage.

back again upon their respective counties of origin; while in other states the effort took the form of multiplication of institutions. But even though this notion of speedy cure was entertained, restraint similar to that of the most dangerous felons was inflicted upon them. Pinel had stricken the shackles from his inmates of the Salpêtrière in 1792, but this courageous stroke was not followed to any great extent elsewhere. The purpose of the institution was custody—the protection of society from irresponsible acts of violence. From this basis it was easy to reason that physical restraint was justified. Again, the overcrowded condition of practically all asylums made chaining, caging and other mechanical securities a measure of safety for the institution and its keepers. In addition, the matter of cost was a large element. It was not easy to secure trusty helpers, and the cost was relatively high to provide enough attendants to watch each disturbed patient constantly. It was more convenient and more economical to chain him to the wall, or to place him in a locked room where he could not destroy the furniture, or to have him sleep in a "crib" which he could neither get out of nor damage.

Dr. Rush, who dominated American practice for decades, advocated modes of restraint such as the straight waistcoat, the tranquilizing chair, the deprivation of customary pleasant food, and pouring cold water under the coat sleeve so that it may descend to the armpits. These methods failing, Rush regarded it as "proper to resort to the fear of death." [16] This era of excessive mechanical restraint in American asylums came to a close. It had declined in English and continental institutions years prior. American visitors to English asylums noted a marked contrast between their inmates and the American inmates. So pronounced was this difference that American advocates of extreme restraint explained it by assuming that English inmates were drawn from a pauper class that did not exist in the United States and out of which came spineless, spiritless subjects who accounted for the greater quiet and docility of the English subjects. Again the invigorating climate of the

[16] "Observations on Diseases of the Mind," cited in *Institutional Care of the Insane*. Ed. by Henry M. Hurd, Baltimore. The Johns Hopkins Press, 1916, Vol. I, p. 234.

American continent was held responsible for the greater activity of the Americans. The truth was that restraints, with their constant antagonism and irritation on the one hand and their devastating influence through physical idleness and lack of mental occupation on the other, were the cause of the large number of shrieking, violent patients, hostile and dangerous.

Already, men like Brigham at Utica and Wyman at McLean were discovering that freedom from restraint was not inconsistent even with extreme forms of dementia provided active and consistent occupation of mind and body were provided. Wherever non-restraint was adopted it promoted the comfort and the well-being of the patients. So far have non-restraint methods supplanted the old method of suppression that at present in some jurisdictions the common forms of mechanical restraints are forbidden by law.

At first, when physical securities were rapidly lessened, the mistake was made of not filling the void they left by mental and physical occupation and by the introduction of therapeutic measures such as the prolonged bath, amusements and exercise in the open air.

Observers had long noticed that wherever the "Utica crib" and other devices for holding a patient in physical inactivity were employed, they were always in use and in demand. This condition arose from the fact that chaining or confining a man, like tying a dog, is the simple and easy way of keeping him safely. As far as mere custody is concerned the old method of the jail and the almshouse was the cheapest and the safest yet devised. But scientific men soon observed that it was ruinous to the welfare of the patient, and that humane treatment was practicable and non-restraint methods highly curative of his condition. As soon as the attendant was deprived of the strait-jacket, the muffs and the crib, he had to devise some other means of controlling his patient. This he accomplished through kindly, patient, painstaking, individual treatment. Abandoning the teaching of Rush who held that the will of the patient must be broken before he could be controlled, the new régime sought to cultivate his interest in pleasant ways, seeking to develop his powers of adjustment to

surroundings to the highest degree practicable in view of his mental disease.

To individual nursing care, pleasant surroundings, amusements, diversions and sunshine and open air, were added carefully arranged employment both of body and of mind. In physical employment, especially in the period between 1870 and 1890, handcraft occupations, such as rug making, chair making, whittling of toys, and numerous manual industries, were developed to a high degree. At the present day, an assembled exhibit of asylum industrial products is an imposing sight, displaying great skill and mastery of detail. In some cases commercial industries such as brick making have been undertaken. These, however, except for the provision of building materials for use by the asylum itself, lead to overemphasis on the commercial side and tend to overlook the welfare of the patient. The safest, most economical and most beneficial occupation thus far discovered is agricultural activity. This takes the patient into the open, gives his body sound exercise and his mind a real interest. At the same time he is helping to provide food products for his own support. Finally it is an occupation which most patients, regardless of previous training or experience, can pursue with some competence. In Massachusetts and several other jurisdictions, the clearing of wild land for later tillage has provided admirable occupation for the insane.

For mental activity, schools have been set up, in which the patient is given simple exercises in reading, writing and arithmetic and beyond which the patient with sufficient aptitude may go in literary pursuit. In such schools, original compositions, music, original plays and like performances of great credit have frequently been displayed. A periodical journal or bulletin is sometimes published by the inmates. The first of these was issued at the Hartford Retreat in 1837 and the first regular journal at the Brattleboro Retreat in 1842. Their use as a feature of asylum activity increased as enlargement of personal freedom was accomplished.

Medical Treatment—Parallel with reformation in the physical treatment of the insane has gone a transformation in medical treatment. Rush was an advocate of blood letting as

a curative measure for maniacal excitement. This practice was generally prevalent as late as 1854, at which time indeed it had not vanished completely as a remedial weapon from the quiver of the general practitioner. Bleeding had a markedly quieting effect upon the insane patient. It was a lassitude due, however, to exhaustion rather than to an improvement in the condition of the diseased nervous system; and the subsequent effects were ruinous, resulting where used excessively in a practical bar to recovery. It was found to be quite generally true that all maniacs received by the earlier institutions had, before their arrival, been subjected to frequent blood letting.

In early hospitalization it was generally the practice in excited cases to use sedatives as well as emetics and sometimes active cathartics. Reliance was placed upon calomel, Dover's powder with quinine, ipecac, tartrate of antimony or other active heart remedy; digitalis, hyoscyamus, camphor and preparations of opium. At a later date etherization, introduced into official use in 1846, was employed to quiet maniacal excitement.

It was not long, however, before the depletory and reducing measures of early treatment were abandoned and "supporting" treatment came into favor. Local bleeding was still used to some extent. Emetics were employed only in torpid cases. Tartrate of antimony was still regarded as efficient in mania. In general, less drastic measures supplanted the older heroic treatments throughout. By 1880 chloral hydrate, the bromides, cannabis indica and preparations of opium (except codeine in a few cases) were abandoned entirely. Their place was taken by iron, quinine, strychnia and similar agents. Gradually dependence has come to be placed on food as the best tonic, with a greatly increased and diligent use of massage, gentle gymnastics and an increased amount of physical exercise.[17]

## FOR THE STIMULATION OF THOUGHT

1. Should a man declared by a board of health to be suffering from smallpox be entitled to a jury trial upon the issue whether he in fact

[17] Data under this heading are taken largely from an article by Dr. Edward Cowles in *American Journal of Insanity*, Vol. 51, p. 15, quoted in *Institutional Care of the Insane*.

has that disease? Is there any more reason why he should be entitled to such a trial upon the issue of mental disease? Is the analogy sound? Where are the differences?

2. Students of the subject declare syphilis to be the most far-reaching cause of mental disease. If this is so, what should be the attitude of the community toward syphilis in order to place our defenses against insanity upon a preventive basis?

3. How would you deal with heredity as a factor in mental disease if you were seeking to improve upon present methods of dealing with insanity?

4. Excepting the treatment of voluntary and incipient cases, and barring also perhaps, the psychopathic ward, does the small margin of recoveries and improvements among insane patients justify Society in maintaining an elaborate process of hospitalization? Why is not institutional pauper care enough? Is an advanced case of dementia præcox likely ever to be anything but a liability to society? What are your views on this phase of the subject?

5. Institutional care of the insane involves custody and control of the person. It presupposes violent restraints where necessary. It assumes that society has declared the patient to be a source of danger if not restrained. In view of these considerations, are private asylums for the insane based upon sound public welfare reasoning? Is a private jail? Should the government exercise all public welfare functions involving custody, control, or continued restraint of the person? Why?

## FOR FURTHER READING

Glueck, S. Sheldon: *Mental Disorder and the Criminal Law.*
Hurd, H. M., Ed.: *Institutional Care of the Insane, in United States and Canada.*
Jacoby, G. W.: *The Unsound Mind and the Law.*
Tiffany, Francis: *Life of Dorothea Lynde Dix.*

## CHAPTER XX

# THE MODERN PERIOD IN TREATMENT OF THE INSANE

So long as a scientific insight into the riddle of insanity was lacking, the mystery must continue to be judged more by its recognized outward manifestations than by its unknown or little appreciated inward causes. As a consequence, violent symptoms would be thought of as the substance of the disease and hospitals would be built and treatment would be gauged to the suppression of noise, gesticulation, furniture breaking and other outward and obvious acts. The asylum would contain cells; would use the strait-jacket, the muff and the crib; medical application would be such as reduced the violence momentarily, such as blood letting and powerful emetics or strong opiates.

Scientific Knowledge and Better Classification—But when the causes of insanity became better known, the diseased condition of the brain rather than dramatic outward manifestations became the chief subject of study and treatment. Relief or change in outward symptoms became only the telltale of success or failure in the operation. As physical restraints were lessened individual attention had to be increased; and with individual attention came inevitably that better understanding of the inmate group which has resulted in rational classification. In American institutions this process of classification was advanced greatly in the decade between 1880 and 1890 by visitation and study of the commendable progress already made in non-restraint methods in English and continental hospitals.

The first and obvious division of the asylum group was that between the weak and anemic on the one hand and the strong and turbulent on the other. Separate wards were developed for the aged and feeble, the depressed and the exhausted. Another group calling for separate provision were those suffering from the more acute forms of mental disease. Of the re-

mainder, those who were capable of sustained labor were housed in cottages, usually apart from the main establishment, and assigned to outdoor work in the nature of chores on farm, stable and grounds or in crop raising, and other agricultural pursuits. The residue occupied the older wards where differentiation was not essential.

The special ward for acute cases came by a natural process of evolution to be used as a receiving ward for all incoming cases. It was a simple process to think of it as a separate and complete unit in itself. In 1895 the reception ward of the Buffalo Asylum grew into a separate department known as the Elmwood Building, since used for the treatment of acute cases.

German experience and the urging of Dr. Peterson of New York finally brought about the psychopathic ward and eventually the separate psychopathic hospital. One of the first of these wards was set up in connection with the Albany General Hospital. Michigan followed with a state psychopathic hospital. It was established in connection with the hospital of the State University, and has made a record in research as well as in treatment.

The third institution in this special field was the state psychopathic hospital at Boston created after earnest agitation through ten weary years. It was a separate unit but was made nominally a department of the Boston State Hospital.

From these beginnings, psychopathic wards have become general. Those departments, equipped with facilities for hydro- and mechano-therapy and all the equipment of a general hospital for the treatment of acute diseases, manned by able staff, have revolutionized treatment not only by their prowess with acute cases but by their still more valuable research studies into the causes of insanity.

Functions of the Psychopathic Ward—The functions of the psychopathic hospital as now carried out are still most concisely outlined in the annual report of the Massachusetts State Board for 1910. They are as follows;

"The psychopathic hospital should receive all classes of mental patients for first care, examination and observation, and provide

short, intensive treatment of incipient, acute and curable insanity. Its capacity should be small, not exceeding such requirements.

"An adequate staff of physicians, investigators and trained workers in every department should maintain as high a standard of efficiency as that of the best general and special hospitals, or that in any field of medical science.

"Ample facilities should be available for the treatment of mental and nervous conditions, the clinical study of patients in the wards, and scientific investigation in well equipped laboratories, with a view to prevention and cure of mental disease and addition to the knowledge of insanity and associated problems.

"Clinical instruction should be given to medical students, the future family physicians; who would thus be taught to recognize and treat mental disease in its earliest stages, when curative measures avail most. Such a hospital, therefore, should be accessible to medical schools, other hospitals, clinics and laboratories.

"It should be a center of education and training of physicians, nurses, investigators and special workers in this and allied fields of work.

"Its out-patient department should afford free consultation to the poor, and such advice and medical treatment as would, with the aid of district nursing, promote the home care of mental patients. Its social workers should facilitate early discharge and after-care of patients, and investigate their previous history, habits, home and working conditions and environment, heredity and other causes of insanity, and endeavor to apply correction and preventive measures."

Detention—The psychopathic hospital in its capacity as a receiving ward, became in many instances a detention ward as well. This is notably true of the institutions in California. In many instances the state system for the apprehending and treatment of mentally diseased persons includes one or more detention wards where patients may be housed quickly after being taken into custody. Minnesota has a system of such detention hospitals. In other jurisdictions existing hospitals may receive and hold without a certificate of insanity for a limited time, as in Massachusetts (7 days); Michigan (5 days); Pennsylvania (30 days by commitment to the psychopathic ward of a hospital); South Carolina and Tennessee (5 days with certificate but without commitment order). In the absence of these

special provisions the jails and lockups still perform their historic function.

Under constitutional government no man may be deprived of his liberty without the judgment of his peers. And it is immaterial whether the issue pending is crime or whether it is insanity.[1] It was early laid down by the English courts that no man may be deprived of his liberty upon a finding of insanity without a jury trial if he demands it.[2] The right is written into the Lunacy Regulation Acts of Great Britain [3] and is therefore the established English law. Obviously the mere fact that a man is insane does not authorize his arrest and confinement without a warrant, if he is not dangerous to himself or others.[4]

Methods of Apprehending the Insane—But if an insane person, being at large, is violent and in imminent danger of killing himself or others or destroying property, common sense dictates quick action. Consequently, by a custom so ancient and well established as to be a part of the common law, it was legal for any person, without warrant, to deprive an insane person of his liberty, to bind him, and even beat him if extreme need existed. But this authority applied only to emergency. This old customary right was transferred with the common law to the American colonies. In early English statutes any man was justified in committing an assault to restrain the fury of a lunatic. A physician was so justified if attacked by an insane patient.

New Hampshire on this old English foundation ruled through her high courts that any person might restrain a dangerous lunatic for a reasonable time, until proceedings could be taken for the appointment of a guardian. By a statute of 1797, any two justices were empowered to commit to the house of correction any person lunatic "and so furiously mad as to render it dangerous to the peace or the safety of the good people, for such lunatic person to be at large." As to the method of determining lunacy the judges were to be authorized

[1] *Ex rel. Stewart,* Kirkbride, 2 Brews., 419.
[2] Bryce & Graham, 2 Wils & Shaw, 481, 517.
[3] 16 & 17 Vict., C. 70, § 40 *et seq.*, and 25 & 26 Vict., C. 89, § 8 *et seq.*
[4] Look & Dean, 108 Mass. 116 (1871).

to commit, etc. "When it shall be made to appear" that the person is lunatic. Paupers were committed on order from the overseers of the poor. Theoretically they would have the right to trial by jury, but in practice a pauper without money and without friends has few rights that are recognized either in law or in practice.

First Move by Law to Place the Determination of Insanity Upon a Scientific Basis—In 1862 [5] appears the first statutory move to put the determination of insanity upon a scientific basis. Though medical opinion had for a long time been resorted to in order "to make it appear" that insanity existed, the Massachusetts statutes then for the first time required the certificate of two reputable physicians setting forth their opinion as to the insanity and authorizing the judge to call for more such evidence if he desired it. Further, he might summon a jury of six men to try the issue. This act in substance remains the law of Massachusetts to-day. The general American practice at the present time is to expedite the process of determination and at the same time render it more accurate by requiring a certificate of reputable physicians that they find the subject insane; requiring that the finding of the fact of insanity shall be made finally in a court of law; allowing a jury trial if the alleged insane person demands it or if the judge considers that course advisable in order to preserve the subject's full constitutional rights; and insisting that in addition to the fact of insanity, it must appear to the satisfaction of the court, in order to warrant commitment to custody or otherwise to deprive the subject of his liberty against his will, that he would be a danger to himself or to others if left at large; finally, immediate detention on temporary order is generally permitted pending the determination of insanity.

Voluntary Patients—No greater tribute to the completeness of the revolutionary change from demonomania and its suppression to mental sickness and its scientific hospitalization could be paid than that implied in the ever-increasing numbers of voluntary patients. Most of our states now make provision for the admission and care of patients who have not been certified as insane.

[5] Mass. Acts, 1862, Ch. 223.

Illinois has admitted voluntary patients since 1893. Her provision is that "any person in the early stages of insanity who may desire the benefit of treatment in a state or licensed private hospital as a voluntary patient may be admitted on his own written application accompanied by a certificate from the county court stating that he is a private or county patient." He may not be detained more than three days against his will.

Some jurisdictions do not require the certificate and expressly exclude a known condition of insanity. All, with the exception of Michigan, set a time limit beyond which the patient may not be restrained against his will.

In Massachusetts, under this humane offer to those who are troubled and know not where to turn, 403 persons voluntarily entered some one of the state institutions in 1924. Of these 15 were committed. One hundred and seventy-eight were discharged; 8 died; 3 received for temporary care; 2 committed for observation; and 196 remained at the close of the year. Including these volunteers and counting also all persons received on ten-day order for temporary observation, a total of 3,498 persons were received into the hospitals for the insane in that state during 1924 without action of court or judge or other formal proceedings. This is a tribute to the modern system of care by which the wretched victim of mental disorder, fleeing but yesterday for his life from a vengeful public, now approaches the government as his most helpful friend in his hour of greatest need. Of this group of informal patients the Massachusetts State Department of Mental Diseases says in its annual report for 1924: "A total of 1,381 persons secured the benefits of treatment in our public or private hospitals for the insane without the formality of procedure before a judge, which would have been attended with delays, legal exactions, semi-publicity and the stigma of having been pronounced insane, all of which was thus obviated to the comfort and satisfaction of the patients and friends." [6]

THE MASSACHUSETTS SYSTEM OF PUBLIC CARE AND TREATMENT OF THE INSANE—As an illustration of the best modern methods in the legal determination of the fact of insanity, and

[6] Mass. St. Dept. Mental Diseases. Annual Report (P.D. 117), 1924, p. 35.

in the commitment, care and treatment of persons suffering from mental disorder, the system as it now stands in Massachusetts is here briefly described.

The state by statute reserves to itself the exclusive care, control and treatment of all insane persons. Counties, cities and towns are forbidden to establish or maintain institutions for the insane and are expressly relieved from all liability for the support of insane persons committed under the law to state care.[7]

Any judge may commit an insane person to any state hospital for the insane by the issuance of an order finding the person insane and a proper subject for treatment in a hospital for the insane, and that by reason of insanity he would be dangerous if at large. But no such finding can be made except there shall first have been filed with the judge a certificate signed by two properly qualified physicians evidencing the fact that they have examined the alleged insane person within five days of their signing and making oath and he is in their opinion insane, and that he is a proper subject for treatment in a hospital for the insane. Further the certificate must state the ground upon which the opinion is based. The judge must send a copy of this certificate with this order of commitment to the institution with the patient to form part of his case record. He must actually see and examine the alleged insane person, or else state in his commitment order his reasons for not doing so; and may summon additional medical testimony.[8]

After hearing sufficient testimony and either before or after the filing of the doctor's certificate, the judge may cause the alleged insane person to be apprehended and properly cared for pending disposition of the question of insanity. He has further discretion to direct the sheriff to empanel a jury of six men to try the issue of insanity.[9]

An order of commitment issued as described is void unless the committed person is received at the institution designated within thirty days.[10]

While the Massachusetts statute is explicit in providing that

[7] Mass. G. L., Chap. 123, § 2.
[8] *Idem*, §§ 51, 53.
[9] *Idem*, §§ 55, 57.
[10] *Idem*, § 70.

the judge's order of commitment shall "authorize the custody of the insane person either at the institution to which he shall first be committed or at some other institution to which he may be transferred," [11] the law is silent as to the termination of custody. Presumably therefore commitment is during the continuance of the conditions found in the commitment order. This means "life" in most cases.

In addition to the general powers, the judge may also issue an order of commitment for observation, but he must, for this purpose, have the doctor's certificate already described. Upon such an order the superintendent of the institution must, within thirty days, report back to the court either that he has discharged the patient as not being insane, or that he recommends commitment. The judge may follow this report or may commit the patient independently of it if he sees fit.[12]

The case of a person found violently insane and needing immediate restraint is dealt with by authorizing the superintendent of any institution for the insane to receive such a person upon the filing of a certificate of the doctors, as described, and without submission to the court. He may retain the patient not more than five days, during which the complainant must bring about commitment.[13] The further emergency case needing immediate custody is provided for by authorizing any physician, selectman, police or other public officer to receive and care for such patient for not more than ten days; during which time the superintendent shall cause his examination by two competent physicians and recommend commitment or else at the expiration of the period must discharge him.[14] Placing or caring for an insane person in a jail, lock-up or prison is strictly forbidden except as emergency and then for not more than twelve hours, pending examination.

Under this well-ordered scheme of public law the care, custody and treatment of persons suffering from mental disorder are lodged exclusively in the state government acting through a department of mental diseases. This executive arm of the government has direction of fourteen state institutions

[11] *Idem*, § 51.
[12] *Idem*, § 77.
[13] *Idem*, § 78.
[14] *Idem*, § 79.

for the insane. Technically the power of the central department over the institutions is limited to supervision, as each hospital has its own individual board of trustees. In effect, however, the local board is so much an integral part of the state mechanism, in matters of budget, dietary, intake and treatment of patients and development of plant, as to form one closely knit system of direction.[15]

Through this extensive functioning the state department, with a specialist at the head, has direction of the state's policy in all matters relating to insanity and of insane persons. Problems of custody, of restraint, of medical treatment, of physical classification, move not at the variant notions of ill-informed county officers but all according to the central policy. And because of the magnitude and consequence of the service, it contains many able and thorough students capable of advancing the sum of scientific knowledge, and the degree of public understanding of such problems. It is the better able therefore to shape public policy in accordance with sound scientific knowledge, offering proposals for social legislation as frequently as understanding and demonstration make it feasible. A thorough codification of the insanity laws of Massachusetts was brought about after extended study by this department in 1909 and has been added to since so that the system of that state serves frequently as a model for statutory enactment elsewhere.

In one particular this advanced legislation calls for special mention. In 1924, as a result of the recommendation, made by a special commission composed of department heads under the leadership of the department of mental diseases, Massachusetts enacted that "keepers and masters of jails and houses of correction shall cause all convicted prisoners serving a sentence of more than thirty days therein, except prisoners sentenced for non-payment of fine or of fine and expenses, and all convicted prisoners serving sentence therein who have been previously committed upon sentence to any penal institution, to be given a thorough psychiatric examination by a psychiatrist appointed under section four" (by the State Department of Mental Dis-

[15] The department has similar direction of three schools for the feeble-minded referred to in the next chapter.

eases).[16] This statute is a direct tribute to the leadership of the late Walter E. Fernald and others of his quality in charge of the Massachusetts problem of mental disorders and defect.

Having reviewed the several steps by which treatment of the insane has advanced to its present enlightened position, it will be of service to set down here the elements of what may be considered a sound system of care and treatment of the insane.

ELEMENTS OF A SOUND SYSTEM OF CARE AND TREATMENT—Insanity, representing as it does a condition of irresponsibility, of varying degree, is fraught with dangers as great to society as is the condition of willful law-breaking. Hence,

1. *The process provided by law for apprehending and providing immediate custody for insane persons should be as expeditious and easy of application as can be found consistent with obvious safeguards of the rights of the individual.*

As insanity is the manifestation of a disordered personality rooted in the brain and nervous system, requiring expert knowledge and long experience in the diagnostician,

2. *The determination of insanity should be made only upon a finding of competent medical experts. This should be made legally regular through a final decree by a court of law, based upon such medical finding. The process of jury trial offers nothing in the way of safeguards of liberty and is stupid as regards the diagnosis.*

Since the care, custody and treatment of insane persons involve deep problems of medicine, and require the personal custody of thousands of individuals in any single jurisdiction,

3. *The process of care should be headed up in a system dominated by the largest unit of government, the state. The problem is uniform. The exigencies of local financing, local politics, local ignorance of the subject matter, multiplied by scores or even hundreds of county and municipal units, should not be permitted to render the making of major policy impossible and the system impotent. Unification is the only alternative, and this means a state system as against county or town leadership. It means also the ownership and conduct of in-*

[16] Mass. Acts of 1924, Ch. 309. See page 246, *ante*.

*stitutions by the state to the exclusion of municipalities and counties.*

Because insanity is the outward expression of a profound complex of disorders,

4. *The treatment of insane persons should follow the principles found valid in the treatment of other ailments,—sound medical application; therapeutic occupation; pleasant, beautiful surroundings; and kindly nursing. In general this means non-restraint methods as opposed to the shackles, strait-jackets, muffs and cribs of earlier days.*

Knowing insanity to be so highly destructive of social values, it is not enough in the social economy of the future to wait until a condition of insanity comes about and then to seek to repair the damage as best we may; hence,

5. *The present movement to encourage the voluntary patient to come to the psychopathic hospital furthers prevention and should be encouraged and greatly extended: and*

6. *Methods and processes of examination of individuals in public custody or in governmental contact, in order to detect mental disorder or incapacity, should be pursued. Finally,*

7. *Research into the medical aspects and social results of mental disorders should be pursued persistently and constantly in order that the sound course in the furtherance of the public welfare may be foreshadowed.*

## FOR THE STIMULATION OF THOUGHT

1. How does it happen that Massachusetts and New York were the pioneers in the development of systematic public care for the insane?
2. What do you take to be the most promising aspect of our present system of discovering insanity and for the care and treatment of the insane?

## FOR FURTHER READING

Briggs, L. V.: *Occupation as a Substitute for Restraint.*
Hildreth, J. L.: *The Public Care of the Insane in Massachusetts.*
Mass. Commission on Lunacy: *Report on Insanity and Idiocy in Massachusetts.* Gen. Court, 1855. H. Doc. 144.
Mass. State Dept. Mental Diseases: *Annual Reports,* P.D. 117.

## CHAPTER XXI

# THE DISCOVERY AND CARE OF MENTAL DEFECTIVES

Throughout a great unclassified army of paupers; in every cell tier of an appalling prison population; in almost every phase of social maladjustment, moves the dark shadow of mental defect. The driveling idiot, the imbecile, the moron, constitute the greatest threat that human society has to face. He is that anti-social factor which must be fought by scientific means, when by and by men shall have lived down the pseudomoral philosophy of an ignorant, mystical past. Astonishing advances have been made in this present century in our knowledge of the causes of mental defectiveness; yet we are still far from a true body of scientific fact. We know that human society cannot protect itself against this greatest of all its defects—the absence of sufficient intelligence to take and hold one's station in the social order—by letting things drift; nor even by gathering up the wreckage, without some attempt to interrupt the stream of such incompetence at its source.

It is only within very recent times and in but a few favored communities that the feeble-minded have been singled out from the almshouse poor and from the insane, for special treatment. Their numbers therefore cannot be indicated with more than the merest approximation. This fact, and the further truth that the high grade mental defective is the greater danger and at the same time the obscurer case, make it difficult to appraise the magnitude of the real problem of the feeble-minded. That it is tremendous is already known. That it shows no abatement is also certain.

Definitions—The classification of mental defectives as here considered includes idiots, imbeciles, morons and epileptics. The last group are frequently considered with the insane and are placed here only because census statistics so place them.

An "idiot," as here defined, is a mentally defective person having a mental age of not more than 35 months, or, if a child, an intelligence quotient of less than 25.

An "imbecile" is a mentally defective person having a mental age of more than 35 months and less than 83 months, or if a child, an intelligence quotient between 25 and 49.

A "moron" is a mentally defective person having a mental age between 84 and 143 months, or if a child, an intelligence quotient between 50 and 74.

An "epileptic" is a person who has seizures. In common phrase, he has "the falling sickness." It is a form of disorder characterized by sudden insensibility, generally with convulsive movements of the voluntary muscles, and occasionally arrest of the breathing, owing to spasm of the muscles of respiration and temporary closure of the glottis. Barr says of it that it is "as indefinable as it is baffling." He begins his description of it by calling it "an imperfect or an enfeebled condition of certain nerve centers producing an insufficient or an ill-regulated supply of nervous energy which is given off in explosions at irregular intervals." [1] Many epileptics are also feeble-minded. The entire class of defectives is known by the inclusive title of the feeble-minded. It is so called in our numerous statutes providing institutions for care and treatment, save that epileptics are most frequently considered apart, or grouped with laws making provision for the insane. For purposes of the public welfare, a feeble-minded person is to be defined as any person who by reason of mental defect is unable to keep his station in Society as an independent self-supporting citizen; who fails in the competition with his normal fellows.

Present Numbers in the United States—On January 1, 1904, there were 14,347 feeble-minded persons in special institutions in the United States, and 16,551 in almshouses. By January 1, 1910, these totals had reversed their relationship, by which there were 20,731 in special institutions and 13,238 in almshouses. This development of special care continued until on January 1, 1923, the special group numbered 42,954 and the almshouse population had fallen to 12,183.[2]

[1] *Mental Defectives, Their History, Treatment and Training,* by Martin W. Barr, M.D., Phila., 1910, p. 211. P. Blakiston's Son & Co.

[2] Figures taken from the U. S. Bureau of the Census, *Feeble-minded and Epileptic in Institutions,* 1923.

In addition to these totals there were 8,777 epileptics in special institutions on January 1, 1923; in institutions for the feeble-minded because they were feeble-minded as well as epileptic, 4,159; in institutions for the insane, because showing psychoses, 10,016; and in almshouses or other benevolent institutions, 1,066.

On January 1, 1922, there were 52,445 patients of both groups on the books of the several classes of institutions named. Of these 48,630 were in residence and 3,815 were on parole or otherwise absent. During 1922, 10,077 patients were admitted, among whom were 8,680 first admissions. Discharges, deaths and other releases totaled 6,650.

The census found that counting the epileptic patients reported as feeble-minded and vice versa, the total number of feeble-minded patients January 1, 1923, was 49,086 and the total number of epileptics, 12,678. Moreover, the census of insane persons, taken separately, revealed the fact that in the institutions for the insane on January 1, 1923, were 11,942 feeble-minded patients with psychoses and 6,887 without. Epileptic patients in these institutions numbered 9,155 with psychoses and 861 without. The almshouses on the same date contained 12,183 feeble-minded and 1,066 epileptics. Combining the census figures for all institutions therefore, it may be stated that on January 1, 1923, there were in institutions in the United States 80,098 feeble-minded; 23,760 epileptics; and 876 unclassified. Reducing this grand total by the number of feeble-minded epileptics not separated thus far, leaves 93,825 patients.

Returning to the 42,336 feeble-minded patients in special institutions, 6,642 were idiots; 20,161 imbeciles; 14,636 morons; and 897 unclassified. Of the 8,519 epileptics, 1,232 were symptomatic and 7,287 idiopathic. The percentage of urban sources among the first commitments in 1922 was 63.6. Among rural commitments imbeciles outnumbered the morons. Among urban commitments, the morons greatly predominated, indicating the problem which the moron constitutes in modern city life.

The outstanding comment upon these figures is that relatively speaking only a few of our mental defectives are housed in institutions. It may be that somewhere near 10 per cent. are

so cared for, but this would be a hopeful figure. The morons, least easily identified of the whole group, constitute the chief threat to the social welfare. These are seldom discovered until a serious charge of crime, or a long course of prostitution, or other delinquency brings them before the psychiatrist for examination. There is no place in the world where the problem is fully taken care of.

In England and Wales on January 1, 1925, there were 19,376 mental defectives under care. Of these only 446 were in state institutions. Certified institutions contained 12,115 and approved institutions (poor law unions) 5,530. Six hundred and forty-one were merely under guardianship, while 363 were in approved homes and 281 in certified homes. This would constitute a small fraction of the feeble-minded residents of the City of London. This fact indicates the incomplete state in which classification of mental defectives for special care now stands, even under a government which has maintained its integrity for a thousand years.

Findings of Special Surveys—In 1921 the National Committee for Mental Hygiene (United States) conducted a survey of the feeble-minded in South Carolina.[3] Two and eight-tenths of the white children attending public school were found to be feeble-minded. Colored children showed 4.2 in every hundred. These two groups totaled 13,000 defective children. The condition was found to be nearly twice as frequent in rural as in urban communities. In the State Penitentiary they found 13.5 per cent. of the inmates feeble-minded. Fourteen and four-tenths per cent. of the juvenile court grist was feeble-minded. Juvenile correctional institutions showed 20.6 per cent. Almshouses reported highest, with 45.7 per cent. suffering from mental disease and 34.5 per cent. feeble-minded. Of the 50 boys and 53 girls in the state school for the feeble-minded at Clinton, 85 per cent. were classed as morons.

In a survey of mental defectives in the District of Columbia made by the Federal Children's Bureau in 1915,[4] 798 persons falling within this classification were found in a total popula-

[3] Doc. 1, So. Car., 1922, Vol. II.

[4] Mental Defectives in the Dist. of Columbia. Bureau Studies. Series 2. Publication No. 13.

tion of 400,000. Of these 428 were at large in the community; 249 were inmates of institutions not specially designed for the care of the feeble-minded; 97 were in schools for the feeble-minded outside the District; while 24 were boarded out in family homes by the Board of Children's Guardians. Thus, the survey found that only 12 per cent. were receiving proper care according to approved standards. A considerable number of the total were also epileptic.

The same Bureau, in a study of mental defectives in New Castle County, Delaware, made in 1917, found 212 positive cases, of whom 138 had been diagnosed by physicians and 74 were too low grade to require it. This group, of course, must constitute a minimum of the total of defectives, since grave difficulties stand in the way of ascertaining record data concerning the higher grades of mental defect, and that grade is, naturally, most numerous. The total population of the county was 131,670. In addition to the positive cases this survey found 361 questionable cases. Of these 81 had been diagnosed as probably feeble-minded; 80 had marked physical defects indicative of mental defect.

Sixty-eight of the whole group were in institutions not adapted to their needs. Ninety-eight had serious delinquency records. All told, more than 1,100 persons were reported to the investigators as being probably feeble-minded.

In another county of Delaware the Bureau found 257 feeble-minded persons arising largely out of two family strains.[5]

Dr. Wilhelmine E. Key, in an intensive study of one of Pennsylvania's known foci of hereditary mental defectiveness,[6] in an area of 700 square miles and in a population of 16,000 people, found 152 adults partially dependent upon charity; 30 alcoholics; 89 sexually immoral; 22 criminalistic; 20 alcoholic and sexually immoral; 15 alcoholic and criminalistic; 10 sexually immoral and criminalistic; 3 alcoholic, sexually immoral and criminalistic; and 167 children sixteen years of age or under, of whom 144 were permanently retarded in school; 14

[5] Mental Defect in a Rural County. Children's Bureau Publication No. 48 (1919).

[6] *Feeble-Minded Citizens in Pennsylvania,* by Wilhelmine E. Key. Pub. Char. Assoc. of Pa., Phila., 1915.

were permanently retarded and incorrigible; and 9 so retarded and also wayward and sexually immoral. Altogether, a total of 508 persons, each of whom was also feeble-minded.

One hundred and twelve of this group lived in two small settlements. Three hundred and twelve arose in ten family strains, each one a byword in the mouths of public relief agents and peace officers. Two strains with their network of relationships were responsible for 221. Altogether there were 3,000 families in the population of the district studied. This entire group of defectives was limited to 192 of those families.

One hundred and fifty-four were women who had borne children. Indeed only two feeble-minded women over twenty years of age were found who had not borne children. Forty-five of these mothers, who were past child-bearing age, had borne a total of 310 children, or an average of 7 children apiece. This is a birth rate over twice as great as that of normal women in the same district. Of their 310 children, 62 were dead; 144 were defective; 10 had gone and could not be followed; 4 were industrious and appeared ambitious; the rest were "at best indifferent in character, many of them borderline cases, whom a more rigid classification would have included among the defectives."

A further important fact in this study was the survival rate of 2.5 per cent. among normal children of the district as compared with a survival rate of 5.5 for these 310 children of defective mothers.

These ten defective family strains are typical of such groups the country over. Dr. Key's description of one of them will suffice to indicate their unmistakable character:

"The father of Joseph Depue and the mother of Joseph's wife were brother and sister and bear a name which stands for nervous defect in other sections of the state. They and their children are the only representatives of the family in the territory studied. Joseph was a good workman when he chose to be, but drank hard and almost constantly, and was very abusive to his family. His wife was indolent, though amiable, and incapable of caring for her family in any way. They came to S—— a dozen years ago, since which time their destitution, the unspeakable condition of filth, abuse, and moral laxness under

which they live, have been a sore problem to the community.

"The youngest of their twelve children had cleft palate and did not live. The next older was a cripple who never walked and died at three. All the four grown daughters are very defective mentally; three are deaf and imbecile; and three have had children born out of wedlock. Two of them are now married to men as lacking as they are, and have growing families of children. Of the sons, only one, a young man of 24, is steady and works hard to keep the family from absolute want. The father died last year. The mother has become bedridden from rheumatism. . . . One daughter has been sent to a state hospital." [7]

A story to match the above can be produced from the case history of almost any feeble-minded woman in any of our county poor houses throughout the breadth of the land.

In the feeble-minded we have a social problem of the first magnitude. It goes without saying that in a community where the individual counts for so much, it is practically impossible to secure record data of mental defectives other than those confined in public institutions or held in some way through public contact, as in the public schools. Again, the higher grade of defectives—the group most dangerous to sound social relations—are hard to identify. As a result we find the proportion of mental defectives in prisons, in almshouses, in schools; and then with the aid of field research into social conditions, make a guess at the total. There can be no question that we have under care only the merest fraction of the whole, and this fraction the most obvious, including idiots who are the least dangerous as breeders of their kind. Our statistics thus far prove nothing perhaps except the fact that the problem is woven into the entire fabric of Society and is so extensive and so firmly entrenched through hereditary transmission as to constitute a serious threat to civilization itself.

Some Causative Factors—The causes of feeble-mindedness are little known. Much stress is laid upon prior condition of parents and upon the condition of the mother during gestation; some emphasis upon the delivery itself, and a good deal upon conditions after birth. For instance, in two studies, total-

[7] *Feeble-Minded Citizens in Pennsylvania*, pp. 47, 48.

ing 5,430 cases, made by Drs. Beach and Shuttleworth at the Darenth and the Royal Albert Asylums, England, and Barr of Elwyn, 64.85 per cent. were attributed to causes prior to birth; 2.92 per cent. to conditions at birth; and 32.23 per cent. to causes arising after birth.[8] More than a fourth of the prior causes showed a history of phthisis in one or both parents. Socially speaking this is a fact of primary significance. But the one great outstanding fact of causation is that heredity hangs like a shadow of impenetrable dark upon the whole problem of imbecility. Barr assembles testimony covering 15,745 cases and concludes that by all observers "the hereditary causes, whether acting singly or in combination, are found to be most pronounced and these again are distinctly accentuated in the condition of mothers during gestation, and in the heredities of imbecility and phthisis." [9]

The Far-reaching Threat to Society—To the reader of that rapidly accumulating mass of evidence piled up in such special studies as the "Ishmaels," "The Jukes," "The Kallikak Family" and "The Hill Folk," this problem of the feeble-minded looms largest among the threats to human welfare. The deadening effect of brindle stock, incompetent citizenship, inability to do the thing which constitutional government requires of every citizen as a condition precedent to social success—this is the dry-rot which threatens Society more than ill health; more, thus far, than over-population; worse than those inequalities inherent in our industrial system. Man in his proudly inaugurated ethical Society in which he claims to be master of his fate, has received no greater warning than this, that taint will tell, let the way of it be ever so obscure. Left to himself he tends to die from the top down; and the only escape lies in cultivation of his stock,—the cutting off of defective strains. That is to say, man, with his artificial system, somehow must replace nature's process of selection if he would survive his own inherent defects. With the knowledge he already possesses he would have made some rational move already were it not for the persistence of ancient and habitual

[8] See Barr, p. 92.
[9] *Idem*, p. 123.

moral tenets suited to an age of mythology rather than an era of truth.

History of Care—Though the idiot and the low-grade imbecile have been recognized for ages, the feeble-minded, as that inclusive grouping is used in modern phrase, is not more than three or four generations old. To the ancients and to our own forefathers the driveling idiot was of the same ilk with the insane. They differed only in appearance, in conduct. But their dissimilarities were less than their kinship since for some reason they were both lacking in intelligence. As to the cause, that was not far to seek. Here was a mystery, and for all mysteries man drew upon his imagination for a solution. The gods did this thing. So said the ancients. And since the gods of one civilization invariably became the devils of the next, the Christian era said that the devil did this thing. It was again a manifestation of that dread state, demonomania. The idiot from earliest times was an outcast, horrid and despised, a loathsome thing, to be barred from human rights and privileges. In Sparta the defective was allowed to die—in fact, was thrown into the Eurotas. History shows traces of this harsh practice in other civilizations as well.

With the dawn of Christianity, there arose a tenet of mercy which held out to these outcasts the hope of life. Through the Middle Ages we find them looked upon with superstitious awe. They have the freedom of the castle of the great. They come and go through Europe and are known as "Les Enfants du bon Dieu." The American Indian, whether by a philosophy borrowed in modern times from the Jesuits or out of his ancient theology, called them "children of the Great Spirit."

In early English law the king became custodian of the land of natural fools, taking the profits and supporting the defective, rendering the estate to his heirs after death.[10]

It was not until the hospital of the Bicêtre was established at

[10] "The king shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the land be holden. And after the death of such idiots he shall render it to the right heirs, so that such idiots shall not aliene, nor their heirs shall be disinherited." Stat. Ed. II, Cap. IX. This is followed by a similar statute relating to lunatics. (Cap. X.)

Paris in the middle of the seventeenth century that we find any movement to provide congregate housing for defectives: and it was not until Itard, laboring with the wild boy of Aveyron, had been followed by his pupil Seguin, that we have the first attempt at the "education" of the idiot. In 1837 Seguin set up a private school for that purpose in Paris.

In 1842, private institutional care was developed in Switzerland and in the United States. This latter movement grew out of the efforts of Samuel Gridley Howe to teach idiots in his South Boston School for the Blind. Practically coincident with Howe's efforts were those of the Hartford Retreat to train the idiots who drifted into their population.

Saxony provided the first state institution, in 1846, at Hubertusburg. In the same year the State of Massachusetts appropriated a sum for the establishment of an experimental school under the direction of Dr. Howe. This institution was opened in 1848 with 13 patients. In 1850 the state incorporated it as the Massachusetts School for Idiotic and Feeble-minded Children. Seguin was called to be Dr. Howe's associate. These two represent the pioneers of the rescue of the feeble-minded in the United States. This school later moved to its present site in Waverley, near Boston; has been the object of pilgrimages from all quarters of the globe to observe the methods used in the teaching and treatment of the subnormal; and in later years to hear and learn from Fernald, the dean of American scientists, struggling with the problems of mental defect.

From this beginning the institutional care of mental defectives as a class apart from the inmates of almshouses has kept steady pace with the increase of knowledge of defective states through the science of psychiatry. Taking the obvious cases first, and moving toward the care of those who, if uncared for, constitute the greatest menace to themselves and to Society, our methods of care have steadily progressed. At first, the notion appears to have been that defective children could be taught books after the manner of normal children. The popular notion was that they were only slow and could be hurried up by individual teaching.

That notion did not last long. Itard, in his five-year effort

to teach the "wild boy of Aveyron, thinking him to be *ferœ naturœ* and untouched by the influences of civilization, discovered that he was in fact dealing with a defective mind, and that such a mind was not capable of receiving instruction suited to normal mentality. In like manner the older notion that the feeble-minded were the under-privileged merely, soon gave way to the certain knowledge that they were unfertile soil, not capable of cultivation beyond rudimentary levels. This knowledge made the grammar school on a custodial basis inappropriate in its educational functions at least, to the task of educating the defective." The experience of our "Schools" for the feeble-minded was that the defective child, if capable of learning at all, must learn according to his own defective mental processes. For some this never can mean more than dressing themselves and perhaps feeding themselves. For others it may mean such coördination as balancing a wheelbarrow without spilling the contents. For still others it will mean the simplest elements of reading and writing. Going on up the scale, the high grade moron may be capable of some elementary schooling—may become a steady worker feeding raw stock into a modern automatic, fool proof, machine.

Our institutions, therefore, turned to a process of "education by doing." The defective was given tasks of educational value. They taught him how to work with his hands; how to tend cattle; how to run a barrow; how to plow; how to go errands; in short, how to do those simpler tasks of everyday life necessary in the job of making a living. The present basis of institutional organization provides, broadly, two main divisions—education and custody. In the school department the defectives receive training usual in the common schools. Their education is similar to that of normal children. It differs only in degree. It is an interesting historical fact that the project methods of teaching normal children had their real beginning in the teaching of the subnormal. Necessity enforced the use of progressive games; the general occupations of the kindergarten; educational gymnastics; and manual training in order to catch and hold the attention of these primitive minds. Thus was uncovered the key to the leadership of the normal mind. The present revolution from a quantitative, disciplinary sys-

tem to a qualitative, self-interest plan in our public schools goes back to this humble origin at least for its primary impetus.

The custodial department affords protective care, both to the defective and to Society to which he may be a menace, in cases of idiocy and the lower grades of imbecility; to the high-grade imbecile who is criminalistic and to the feeble-minded woman with sex tendencies. If it were not for the need of custody, the "School" for the feeble-minded would be a department of the system of public schooling, just like the present classes for backward children.

Modern School for the Feeble-Minded—Bearing in mind this progress in institution development from the idea of backwardness and books to the concept of defectiveness and vocational training, it is practicable from the study and experience of institution men like Fernald, Wallace, Little and others, to construct the advisable features of a "school" for the feeble-minded which would meet the institutional aspect of the problem with the maximum of effectiveness.

The first consideration is land. The only purpose of buildings in the philosophy of care of individuals—in particular the care of growing children—is storage of supplies and shelter from inclement weather. It follows that the plant should be so constructed as to permit a maximum of sunshine and fresh air. This means, first, an ample acreage as a location. Where possible there should be fields and woods, pastures and meadows. Outdoor occupations and organized play are of the essence in the institution regimen. Kerlin [11] has said that the situs should contain from fifty to one hundred acres. In view of America's magnificent open spaces this minimum is probably too small, even for the surroundings of the main plant. If it is an institution without colonies, Wallace's estimate of one acre per inmate of normal capacity is probably not too generous.

It goes without saying that the construction should be appropriate to the needs; yet so seldom is this principle appreciated by institution builders that it deserves comment. Governmental practice in the United States divides up the authority

[11] Before the American Association for the Study of the Feeble-Minded, 1878.

so minutely that it is usual for specially appointed committees with no knowledge of the purpose to which an institution is to be put, and no official contact with those who are later to administer it, to select the site, plan, build and equip the entire plant. Such commissions in their ignorance of the subject matter of their trust employ an architect who is equally ignorant of the purposes. He plans the institution plant from the outside looking in, rather than from the inside looking out. The writer recalls inspecting a $2,000,000 plant within recent years, a part of which was designed for the almshouse care of old ladies. The unit in question, though located in the lake district of northern United States, was built on the California Mission pattern, with heavily tiled, low-pitched roof, and broad overhang. In the center was a patio with a fountain surrounded by broad-leaved cannas and other flowering plants. Seen from a distant hilltop, this home for aged and infirm people left the eye completely satisfied. From its broad eaves the mowing sloped away to a brook with giant oaks bounding the slope. Chimney swifts came and went, and from the grove the wooden note of the "rain crow" broke the stillness of midsummer.

Inside, the chief rooms looking out upon the patio were the kitchen and scullery. The old ladies' ward was a dormitory, large as the interior of a church, with gray concrete floor, and a strip of carpet running lengthwise through the center. On either side were rows of cot beds, each equipped with oval floor mat, box under the head of the bed for personal belongings, and a rocking chair. In these chairs, down the long double row, sat old women. It was possible to see out of the high windows by standing erect, but one had to go to the window to see the sloping land which ran down to the brook. Sitting in one of the rockers it was possible to see from the window nothing but a square patch of sky.

Here was a fine example of a plant constructed, at lavish expense, wholly from the outside looking in. Sound institutional construction policy would have consulted the old ladies first, making certain that their needs and their pleasure were served even at the risk of offending that American sense of the artistic which is boasted if not proved. John E. Fish, M.D.,

Superintendent of the Massachusetts Hospital School, for crippled and deformed children, spent some seventeen years developing his "monitor cottage," a structure similar to the highly developed cow monitor of our dairy farms, which provided direct ventilation and quick elimination of exhaust air through a monitor in the roof. Having evolved the plan to his satisfaction, he then turned it over to the architects with the remark, "That is just what I want. Now you make it look presentable."

The modern school for the feeble-minded should be located within easy access to a large center of population. Such location gives it close contact with courts, with public departments and private social agencies. In matters of administration it secures advantages in the purchase and delivery of supplies. In staff it has the tremendous advantage of finding employees who when at the institution are not so completely isolated from the world of attractive affairs. "It should always be the aim of the institution," says Wallace, "to become closely affiliated with the community, thus facilitating service to the people of the state. The institution should be so situated that it is easy for it to be well known by the community." [12] If the "school" is located near a population center the public will know it with some intimacy and appreciate its excellences as an educational instrument. If placed in a remote section, the public will know it only by its mistakes.

Construction should be undertaken only after a thorough plan of the whole plant has been made. The board of trustees or superintendent should look ahead fifty years in the development of their institution. Each piece of construction would then fit naturally into a definite plan, which would be changed only in the light of better knowledge.

A school for the feeble-minded, like a hospital for the insane, should take no chances of destruction by fire. Consequently, the buildings should be not more than three stories high; should be at least of mill construction of good fire-resisting quality. Stairways should be of non-combustible material.

It is more important than generally supposed that the ar-

[12] Proceedings of the forty-eighth session, Amer. Assoc. for the Study of the Feeble-Minded, Washington, D. C., 1924.

rangement of a school for the feeble-minded should be laid out on straight lines. A rectangular scheme of building arrangement would avoid complicated design in piping and in avenues, flower-beds and other outdoor plans which the inmates have to carry out. The feeble-minded person requires simplicity in everything. The modern school for the feeble-minded should be developed on the segregated or cottage plan in order to afford a maximum of flexibility in plant to meet the needs of detailed classification. Thus, aside from administration building, central power plant and central kitchen and service building, there should be infirmary buildings for small, low grade children, an infirmary for low grade adults, one for each sex; and sufficient nursery buildings to house twenty-five children each. These nurseries provide special care, which is difficult to obtain in the large dormitories. The buildings housing inmates should be separated by sufficient open space—say 150 feet—in order to provide ample play space for the inmates of each. In addition to these elements there should be a central hospital for acute diseases serving both inmates and employees, affording a pavilion for the tuberculous of both sexes and a ward for contagious diseases constructed in sections. This would provide for separate isolation by diseases, when advisable, and by sex. The Wrentham (Massachusetts) State School housing 1,200 inmates comprises 59 buildings of all kinds. Seventeen of these are dormitories or cottages for inmates.

So much for the central plant of the modern school. There is one important feature yet to be mentioned; this is the "colony." It is the answer, at least partial, to the problem of limited appropriations and unlimited demands for custodial care of the feeble-minded. Fernald, at Waverley, found that by going a distance back into the country and purchasing wild alder scrub at some $10 per acre he could provide an admirable laboratory for the educational labor of his more vigorous patients. Such a colony was established at Templeton, some fifty miles from the parent institution. The waste lands contained 1,654 acres. Some old farm buildings served as shelter for a group of husky boys, who began to cut the scrub and remove the rocks, with which the Massachusetts terrain is bountifully

supplied. In recent years this farm colony has provided almost all the fruit and vegetables required by the parent institution. The 300 inmates assigned to Templeton have consistent outdoor labor under the most healthful conditions. Those capable of acquiring the habit of unskilled farm labor are being reclaimed for a place in the community, the "school" serving as educator up to the point of their several capacities. Such a colony extension, now adopted by the best institutions for the feeble-minded as well as for other custodial enterprises, is practicable everywhere.

Methods of Discovery of the Feeble-minded—It is only in the light of the new psychology that the human family has become willing to recognize more than the obvious in abnormalities and deficiencies of mind. Our first institutions for mental defectives were schools for idiots, the least dangerous but the most obvious group. Imbeciles of low or middle grade came next, usually through the circumstance of some criminal act for which they were committed in lieu of punishment. The high grade imbecile and the moron represent that dangerous group who recruit the classes of criminals and paupers so largely. They are the fecund who carry the determiners of mental defect in their heredity. Down to the present moment they have gone unidentified as potential harms to Society. Only now are we beginning to set up authoritative methods of identifying mental defectives, approaching the problem with great caution and many misgivings regarding the rights of the individual. In most of these methods we permit the subject to prove himself. Thus in our bureaus for juvenile research we wait until the child is a delinquent and then begin to inquire into the causes of his conduct. This is late in his case, but it is wise as far as it goes. The present day process of psychiatric examination and study of the conduct of children coming into our courts is rendering great service to Society. It would render still more if the means existed for carrying out more of the findings resulting from these case studies.

In addition to the study of juvenile delinquents, the growing practice of providing special classes for children who are backward in their grades in the public schools bids fair to become an important link in the system of identifying our feeble-

minded. It has the great virtue of reaching the children early, when they can be helped to such protection as relatives, properly advised, and perhaps the state, can give to help them from becoming anti-social themselves or falling victim to human parasites. New York was the first state to enact such a special schooling law. Massachusetts followed in 1919 and now has a large number of such special classes. Her law requires that wherever there are ten or more pupils who are three years or more backward in their grades, special classes shall be provided. The legislative purpose of this statute is to provide intensive teaching in order to bring these backward children up to grade. The common sense purpose is to remove the stupid from the regular class room, thus taking up the drag anchor which holds the normal children and their teacher back. The future object must be not only the sounder classification of children for schooling purposes but also the identification of that army of feeble-minded persons who represent the dry rot of modern society.

A third step in the process of discovery was taken in Massachusetts in 1911 but did not become effective until 1920. This is the establishment of institutions for permanent custody of defective delinquents, and the provision of legal machinery by which a court may have any defendant examined and may in case of a finding of guilt, commit him as a defective delinquent, not for a fixed term but under the same conditions under which the insane are committed to custody. When this law went into effect many incorrigible defectives were recommitted from institutions in which they were already in custody. Massachusetts courts now use the statute for commitment directly.

A fourth step, also by Massachusetts, has just been taken. In 1924 an act was passed requiring a psychiatric examination for every prisoner committed to a jail or house of correction for more than 30 days and for all repeaters.[13] Some 4,000 prisoners have been examined thus far and the findings added to their case histories. The State Department of Correction is in process of setting up methods of following each defective prisoner upon his discharge, in an effort to rehabilitate him or

[13] See p. 246, *ante.*

bring about such care for him as may protect the community from his irresponsible conduct. Here again is a mechanism for identifying the feeble-minded.

The Extra-Mural Clinic—Finally, one of the most important steps yet taken in this field is the extra-mural clinic developed by Fernald at Waverley. Discovering that the majority of the feeble-minded can get along well enough in the community provided they have sound teaching when young and protection of some next friend, he began a system of supervision of his discharges, and soon progressed to the free clinic for anxious parents who came from far and near to find out what they should do for their children. Such progress was made as a result of this policy of reaching out into the community that the total extra-mural group now served in Massachusetts numbers upwards of 8,000.

Principles of Procedure in Meeting the Problem of Feeble-mindedness—With this history of the fate of the feeble-minded in mind, what are the principles which should guide Society in meeting the all important problem which they present? Social competence presupposes the valid mind. Defectiveness colors nearly all of our conduct problems in modern life. The criminal, the tramp, the prostitute, the drunkard, the spreader of venereal disease, the pauper—all these pay heavy tribute to arrest of mental development and other defectiveness of the mental faculties. In this fact of mental defect then lies the crux of many of our social ills. What shall Society do about it? What should a true science of the public welfare insist upon in the way of constructive treatment?

As in the case of the insane and the dependent, we have already, in the instance of the feeble-minded, begun the process of gathering up the remains. Anciently we destroyed these simples. Soon we acquired our new Christian tenet of mercy, in the upholding of which we have spared their lives but for a long time undertook to torture the demons out of them. Finally we have given them kindly care whenever wretchedness and tragedy have shown them to us and proved their identity. In the United States alone there were in 1923 fifty-five state hospitals or special institutions giving kindly care and vocational training to epileptics and feeble-minded persons.

The federal government provided twelve. The 93,825 inmates under care in 1923 probably represent not more than one in ten of the feeble-minded in our present population. Fourteen states are still without special institutions. But the movement for institutional provision is in full swing, for which reason we may confidently expect a rapid extension of plants and acreage in our struggle with this problem.

Down to the present our method of discovery follows after the fact—usually long after. That is to say, when a boy sets fire to a dwelling and causes the death of sleeping inmates, we charge him with arson and murder and incidentally discover in his legal fighting for his life that he is feeble-minded and therefore not accountable. Frequently we decline to execute him and protect Society by confining him in a school for the feeble-minded. When a girl has had her fourth, fifth or sixth illegitimate, we have now come to the place where we will have her examined and if we find her mentally defective, place her in custody in a school for the feeble-minded. Fernald cites a case as follows:

"A feeble-minded girl of the higher grade was accepted as a pupil at the Massachusetts School for the Feeble-Minded when she was fifteen years of age. At the last moment the mother refused to send her to the School as she 'could not bear the disgrace of publicly admitting that she had a feeble-minded child.' Ten years later the girl was committed to the institution by the court, after she had given birth to six illegitimate children, four of whom were still living, and all feeble-minded. The city where she lived had supported her at the almshouse for a period of several months at each confinement, had been compelled to assume the burden of lifelong support of her progeny, and finally decided to place her in permanent custody." [14]

An inebriate, under our present-day method of doing things, may and often does take his fortieth, fiftieth, sixtieth commitment to a farm colony for misdemeanants, each time claiming his day in court, occupying his detention cell awaiting trial, getting in the way of urgent criminal court business and occupying the time and attention of numerous public officers at

[14] *Mental Hygiene,* Vol. I, No. 1, p. 40.

relatively heavy expense; yet we do not consider him a fit subject for permanent custodial care nor a proper subject for mental examination, even though every one with whom he comes in contact knows full well that he is a dull-witted fellow with no power of inhibition, certain to get drunk when intoxicants are to be had. He is derelict, and we know it. He may have a wife and a flock of children, all of them apparently dull-normals or worse; yet we take no step to prevent the increase in this flock. By improved methods of research into his social history we may have satisfied ourselves that his defect arises from hereditary causes and that he is breeding the elements of future crime, misery, tragedy—limitless harms to the public well-being. Under a constitutional government created by the people, we accord him the liberties of a free citizen, closing our eyes to his deadly potentialities. Nay, we even make his devastating career the easier by protecting him from accident, disease and starvation. Seeing plainly the course of reason, we nevertheless pursue the course of sentiment.

But it is not by such a sentimental course that this problem of mental defect can be gotten in hand. Human society, in order to defend and to advance the public welfare, must attack the *causes* of defect. Of these the most extensive, as also the most obvious, is heredity. In working out the strategy of combat, therefore, heredity must be given first place as the point of attack. As a first principle of procedure,

1. *Mental defectiveness must be recognized as a community problem to be met by the whole community through its largest unit of government, the state.*

Starting with this premise, the next step should relate to the identification of the feeble-minded.

2. *There should be set up a state census and continuing registration of mental defectives. Through schools, mental clinics, psychiatric examination of prisoners and all other reliable channels, each feeble-minded person should be found and recorded.*

3. *Constant intensive social research should be carried on in order to identify defective hereditary strains with a view to providing a factual basis for that growing public opinion which*

*may, in time, be counted upon to demand the cutting off of such strains in the defense of the common welfare.*

4. *Public institutions for care, custody and training should be established, to serve as resources for the careful vocational training of those persons who appear capable of full or partial self-support without menacing the public well-being through crime or the breeding of more defectives. But the principal function of such institutions must be the segregation of hereditary defectives to prevent procreation. No hereditary mental defective should be permitted to procreate.*

5. *Such institutions should develop farm colony extensions for the training of defectives in unskilled labor suitable to their abilities at a minimum cost to the public.*

6. *Defective delinquents should be segregated for separate custodial care in special institutions. This for purposes of safety and economy.*

7. *The state, through a department or bureau for the feeble-minded, should provide psychiatric clinics in all local districts, making it practicable for the public to secure expert examination of all persons suspected of mental defectiveness. Institutions for the feeble-minded should be made the headquarters of this network of clinics.*

8. *Every person coming to public custody through crime of a serious nature or for misdemeanor often repeated, should receive a psychiatric examination, and if found defective, made the subject of further proceedings to protect society as far as may be advisable.*

9. *Every person, male or female, suffering from venereal disease and convicted of prostitution or illegal sex relation, should be examined, and if found defective placed in charge of the state department for custodial care or such other disposition as may safeguard the public from further harm.*

10. *A process of examination under the supervision of state psychiatrists should be carried out in all public schools in connection with a process of special instruction for all children found to be markedly backward in their grades. A school visitor should relate the findings of those school examinations to the parents, encouraging their coöperation in protecting the child and recognizing its probable limitations. It is essential*

*that the feeble-minded person should be recognized while he is a child, before his career of potential community damage begins, and while he can be helped, if ever.*

11. *No feeble-minded person, especially of the non-hereditary group, who can in the opinion of the state department be kept safely in the community, should be placed in an institution except for a course of training preparatory to a life occupation.*

These principles, in substance, involve two main steps, namely, preventing all feeble-minded persons from procreating and providing kindly care, in custody where necessary, in the community where practicable, salvaging as many for self-support as possible. The present state of public sentiment will not support the first of these proposals, and is coming slowly enough to agree to the second. But the better social sense of the future will support both—must out of social necessity support both. Man with his increasing knowledge of himself and the world in which he must live, is driven in time to this only course as a protection to Society. Only by so doing can he combat those social ills which beset him with increasing power to destroy him.

## FOR THE STIMULATION OF THOUGHT

1. The ordained ministry, broadly speaking, will marry any couple of fair address showing a proper license. It is a part of our moral code that "what God hath joined together let not man put asunder." We insist that the ceremony performed by the minister involves the act of God. Heredity is responsible for more than 60 per cent. of all mental defectiveness, and feeble-mindedness of this type breeds true with deadly certainty. Feeble-minded persons of the hereditary type are being united in marriage every day and are breeding a horde of incompetents to the immeasurable harm of society. What would you do about it?

2. What do you think of a statute which provides a monthly stipend to families in which there are one or more mental defectives? Why?

3. Where did the Montessori system of training originate, and in what does it consist?

4. What are Fernald's ten channels of approach in the psychiatric examination of children for feeble-mindedness?

5. A specialist approached a public officer with a proposal in substance as follows: "A. B. is a white girl of nineteen. She is at the moment an inmate of the X. Y. School for the Feeble-minded. She

is a moron of comely appearance, unusually attractive. She has had three illegitimate children, the last one colored. She was committed to an institution once before but was released on *habeas corpus,* the judge saying that 'so far as he could see, she was all right.' If you as a public officer will express to me in writing your approval I will risk whatever penalty there may be in our laws and perform a sterilizing operation. The girl's parents and the girl herself are willing and desire it." Place yourself in the position of the officer and without taking advantage of the obvious legal refuge, dispose of the case on its merits.

6. A State Department of public welfare has four children in custody, the children of a feeble-minded pair, all of them markedly defective. There are several smaller children in the home. In fact the removal of the four has made room for others, not by increasing the total number born perhaps, but by increasing greatly the chances of survival. The pair are legally married. The man does odd jobs and the woman takes in washing. The oldest child, a daughter of seventeen and unmarried, has a baby, also in custody of the State. The local overseers of the public welfare have given poor relief to this family for years. The case is recognized by psychiatrists as one of hereditary defect. This couple are exercising their constitutional right to life, liberty and the pursuit of happiness. They are law-abiding. They appear to be functioning as citizens up to the limit of their abilities. Would society at the present time permit any course substantially different from the one already taken? What would you do about it if you had authority to dictate the public welfare policy?

## FOR FURTHER READING

Barr, M. W.: *Mental Defectives, Their History, Treatment and Training.*
Davenport: *The Hill Folk.* Eugenics Rcd. Office Studies.
Goddard: *The Kallikak Family.*
——: *Feeble-Mindedness. Its Causes and Consequences.*
Mill, J. S.: *Essay on Liberty.*
Bureau Studies: *Mental Defectives in the District of Columbia.* Series 2, No. 13.
*Feeble-Minded Citizens in Pennsylvania.* Pub. Char. Assn., 1915.
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## CHAPTER XXII

## PUBLIC PROVISION FOR CHILD CARE

Problems of child care and the duty of the State therein are interwoven in all public functions with reference to the care, custody and treatment of the insane, the mentally defective, the law breaker and the dependent. The topic is singled out for special consideration in this treatise not only because of the far-reaching activities of government with reference to special groups of under-privileged children, but also, and chiefly, because the most important consideration of modern Society is the child, his potentialities, his opportunities, his upbringing to the level of self-supporting competence as a breeder and nourisher of that new generation, the recurrence of which in ever-increasing intellectual power marks the upward march of civilization.

Importance of the Child in Modern Society—Thinking of government as a necessary evil, of which the less the better, the Anglo-Saxon has always looked upon the individual as of the first importance; he has looked upon the community in general and its government in particular as of secondary importance. Democracy frames its constitutions always with a hypersensitive fear of tyranny. A government there shall be but it shall not declare an individual guilty of offense against the law without the intervention of twelve citizens—a jury trial. It shall not find an individual *non compos mentis* without according him the right to have a jury of citizens say whether he is in fact *non compos.* It shall not bring an accused to trial on an indictment if there be the least fault in the allegation, even the most ridiculous matter of form rather than substance. If it passes a statute the same shall be strictly construed according to its wording. The spirit of the law is but a general guide to its interpretation. And in the setting up of any statute there shall be nothing binding until a house of representatives as one unit, a senate of representatives as a second

unit, and a governor, president, prime minister or king as a third unit, have all registered their approval. In general it can have no relation to the past as altering things already done.

Any powers not expressly given to such a government by the people who live under it are forbidden. An elaborate bill of rights stands out traditionally since the days of King John as a protector of the individual against the tyranny of government. Modern communities create constitutional governments as a service to the whole, but they look upon them as white elephants and proceed quickly to shackle all four legs to heavy stakes so that the unwieldy and fickle-tempered brute shall do no harm.

The State and the Individual—In this individualistic attitude there is much wisdom, but there is also much of medieval habit not in tune with the needs of the present day. For instance, modern peoples suffer from a chronic inversion of social purpose, in that they attack the obvious ills of Society not in their inception, striking at their causes, but rather in their after results, seeking by a salve-rubbing process to gloss over the telltale surface of deep-seated decay. For example, the law-breaker is unknown to the community until he has committed the act. Society holds it an offense against the individual, a reproach upon his honor, a slander upon his reputation and dignity as a citizen to presume a likelihood of wrongdoing until the deed is done. This wrongdoer may be a sot in the gutter, a high school boy hanging about pool rooms and learning the ropes of delinquency, a girl enjoying the park and the uniforms, a town simpleton with large and ready ears for the schemes of any crook. These persons in their various settings of high potentiality for trouble are of no concern to us of the general community. The fact is that no one of them has actually been proved by a jury of his peers to have broken the law. Until then he is as virtuous, as free, as praiseworthy in the eye of the law, as any, the best among us.

The absurd limit of this fatuity is reached in the case of the modern child. So long as he is normal in outward behavior and can get along without disturbing us greatly, we notice the child only in the mass. We believe in education as a preparation for competent citizenship; hence we establish a system of

compulsory schooling, but the individual child is nowhere in this system. Children in the mass, thus far classified only by chronological age, are the grist of this process. The truth is that the normal child has done nothing; has not gotten in the way of Society; has not become the object of pity or otherwise placed himself in the way of notice. Hence he is out of the picture of so-called public welfare service.

Older Motives in Child Care—What we have done for childhood in the way of special care thus far has been done out of one or both of two principal motives,—either a desire to save his soul or a feeling of pity for his condition. Our attention heretofore has been directed therefore never to the best children in the state, but always toward the worst: never to the little fellow of high qualification physically and mentally to be a contributor to human well-being, but always to the malformed, the diseased, the mentally weak, the abused and the incorrigible. Our quarrel with this inverted process must be not that we carry on public activities for handicapped and under-privileged children—our efforts in that field have been all too few and too often ill-conceived—but that we are neglecting the real social values in our public welfare service. Our past is a record of sympathy dimly sensed and indifferently expressed. Our future must be a logical procedure not lacking in sympathy but motivated by scientific appreciation of the true determiners of social progress. In this field of child care we shall find these determiners in abundance.

A few illustrations from community conditions will serve to point the ideas expressed in the foregoing paragraphs.

The findings of the examining boards for the United States Army[1] in the recent war indicate that 35 per cent. of all the men examined were unfit for war service. These were not volunteers. They were not the dregs or the wrecks of modern industrial life. They were not old and worn out by high-speed living. These were men between the ages of 21 and 30, the flower of American physical manhood. If the young women of America between the ages of 21 and 30 had been examined too, there is no one so bold as to say that the resulting slag would

[1] See U. S. 66th Cong., 1st Sess. Senate Com. Military Affairs, *Report, A. J. Love, C. B. Davenport.*

have run under 35 per cent. It should be noted that war is an exacting service, demanding high physical vigor and soundness; but a careful scrutiny of the requirements will show that by and large these discards for war would be poor risks also in civil life, running to an early decline, likely to contract disabling disease, less able than their physical betters to breed and to rear children who could rate among the normal and the potential contributors to Society. The high incidence of physical breakage and of maternal and infant mortality in childbirth would seem less startling if it were constantly borne in mind that about a third of all our potential mothers are handicaps, breeding to potential fathers, a third of whom do not quite make the grade.

Public School Examinations—Another picture eloquently justifying our first illustration is the findings of physical and mental examination in the public schools.[2] The most conservative estimates based upon the examination of the 20,000,000 children in the elementary public schools of the United States find that 1 per cent. are markedly mentally defective; 50 to 75 per cent. have teeth so defective as to constitute a retarding influence on school progress; 15 to 25 per cent. are suffering from malnutrition; 10 to 20 per cent. have deformed feet, spine or joints; 15 to 25 per cent. have diseased tonsils or adenoids; 25 per cent. have defective eyesight; 5 per cent. have defective hearing; and 5 per cent. have or have had tuberculosis.

Statistically speaking, by the time an American child has reached his sixth year he has passed into a shadow which has blotted out about one-fourth of the sunlight of his opportunities in life. Yet because these defects do not go to his vitals, making him a cripple, or a dependent, or a delinquent, or a defective by which he becomes a public burden, he continues to be "normal." Socially speaking there is nothing wrong with him—nothing that is the business of anybody but himself or his fond and probably ill-informed parents. The community has no traffic with him. He is not an object of pity or of sympathy. Government does not presume to find fault with him. Wait until the tuberculosis leaves the hilum stage and creates a

[2] See Moore, Harry H., *Public Health in the United States*, p. 56.

lesion in the lung. Let his rotten milk teeth ruin that second and only set which must stand with his stomach as main support for him and a brood of dependents in later years; no need to worry about underweights: we shouldn't sleep at all if thin people bothered us just because they are thin. We must wait for the onset of tuberculosis in order to prove that malnourished children are prime fodder for the white plague. The high incidence of family history of phthisis among the feeble-minded is of course beyond our ken in this inquiry. These little folk are the grownups of to-morrow, yet by our older philosophy of public welfare they are normals who must not be interfered with.

Surveys of Venereal Diseases—We might draw a third illustration from what we know of physical condition in our population at large with reference to particular diseases. The New York State Bureau of Social Hygiene finds that syphilis and gonorrhea are more prevalent in that state than any other communicable disease, not excepting measles, 38,872 cases being reported in 1925. Though the law requires every physician to report each case coming under his observation, the cases here totaled are based upon reports from but 40 per cent. of the physicians registered in the state. The Bureau labels these diseases the *diseases of youth.* Of the males one-fourth of all the cases were infected before the age of 21. Of 6,831 females for whom the time of first sex experience was determined, 6,434 occurred before the age of 21.

Venereal diseases are now reportable in the more advanced communities, but in none is there the same brazen enforcement that we find in diphtheria, measles, typhoid and whooping cough—diseases that are bad enough but not to be named in the same day with syphilis and gonorrhea as wreckers of human effectiveness and happiness. The great enemies of the new-born child, standing like ogres at his birth and pursuing him with their sequelæ wherever he goes, are these same venereal infections. Ophthalmia neonatorum, a form of that virulent curse of orphan asylums and all public storage places for children, is their ill-born spawn, which yearly robs thousands of infants of their eyesight.

The Feeble-Minded Child—A fourth example of wrong-ended public policy is the undiscovered feeble-minded child. He comes into the world to act the comedian in a tragedy of which not he alone is the victim. Very few cases of mental defect come to the official notice of government that have not been known for years to the neighbors as "queer," "simple," "foolish," or one of a brindle litter. Nobody knew, of course, or could prophesy that they would commit the particular anti-social act that has brought them to public notice, but the probability of such conduct made the course of Society obvious under any philosophy other than that of the sympathetic gathering-up of remains. This child in more than half the cases is feeble-minded through the transmission of unidentified determiners through heredity. Eugenic studies wherever made have discovered well-defined strains of hereditary defect. They have identified family lines. They have put their finger on the individuals who may be expected to breed defective children. And here they have stopped. We have a philosophy of live-and-let-live. We would not put asunder what God hath joined together. We would not deny any citizen, who never has broken the tenets of Society, the right to mate and to procreate his kind. By our ancient philosophy of sympathy those persons laden with the strain of hereditary mental defect are "normal." The feeble-minded daughter of a family line honeycombed in each generation by mental defect, and its attendant troubles, if she actually goes through a legal ceremony of marriage with the simple son of a similar family line, is equal, in the eye of the law and therefore in the higher sanctions of Society, to the daughter of a family line famous for its leaders. In fact, the valid daughter may marry a poor man and struggle through life with him, giving their children a modest education and start in life,—may even become under-privileged together with her children and starve to death out of pride in a refusal to seek public support: while the dangerous hereditary carrier may breed a numerous offspring, all of them in an almshouse, each one to be given care against the likelihood that any mishap may prevent its power to pass along its mother's dangerous strain to an ever-widening circle of progeny. The problem

is apparent and the solution obvious. The community tarries with an outworn social philosophy, lacking the courage to defend itself against the breeding of brindle stock.

The Neglected Criminal Career—A final example may be drawn from the dock of any criminal court in America. Here is a young man charged with the murder of a paymaster. The court assigns counsel, the prosecution puts on a flock of witnesses. The defense, after dragging the trial over many months, brings in an equally numerous list to testify. At great expense a trial is had and a verdict of guilty obtained. It is appealed. A process of months, it may be years, results in a dismissal of the appeal and the boy is finally brought into the lower court for sentence. Here for the first time the probation officer offers a criminal record three or four pages long, showing probation, fines, commitments—a criminal career of which the veriest crook might be proud.

Only in the unusual case has this young man ever been taken in hand by Society before his first appearance in court. In the unusual case he has been one of the dependent or neglected children which the public has undertaken to care for in institutions. For the most part he has never been seen by the public—he has been "normal." Yet the psychiatrist in the juvenile court clinic, the settlement house worker in his neighborhood, the pastor in his district—all these persons know that this young man's career began many years before he stood for the first time in a criminal dock; and that there are probably numerous circumstances attending his boyhood that might have been altered by closer public attention to what was going on; an alteration by which the whole course of his life might have been turned toward productive citizenship.

When we look over our half million tramps; our more than a million mental defectives; our couple of hundred thousand insane; our vast army of the dependent poor; we may well ponder this old principle of ours by which the citizen is his own boss, master of his own fate, enjoyer of his own disease or other social danger, so long as he does not come into actual and overt conflict with the rights of others.

A contrast is here drawn between a new scientific social philosophy and the old doctrine of gathering up the remains.

Ambitious reformers will insist that we have already accomplished the transition from the old order to the new. The simple fact is that we are still living in the old Dark Ages. But it is true that the world is making an effort, greater than ever before in history, to put a scientific structure into public welfare service. It is the object in this chapter to trace the history and define the status of our several community processes in the care, custody and treatment of children, and to indicate, so far as may be, the progress we have made to the newer régime of scientific social service.

The Dependent Child—A dependent child is one who through no fault of his own has lost his natural support and must depend upon the public for the necessaries of life and for such upbringing as current standards require. He is a pathetic figure, holding out his hands and receiving nothing. Government in seeking to supply his needs has employed various methods of care. Broadly speaking, the history of the public method has been one of placement in family homes, interrupted by an unwise interlude of congregate institutional care. It began with placement in family homes—"fosterage" as it has been known from time immemorial in Ireland, "indenture" as it is called in more modern times. But always where there were almshouses or workhouses for the poor, there were to be found a good many pauper children, whether with or without relatives. By the opening of the nineteenth century there was one separate public institution for dependent children in the United States—an orphan asylum in Charleston, South Carolina. Care of the dependent child in the poorhouse was the regular course and still is in a few of our jurisdictions.

Workhouse Death Rates—To see the dependent waif in all his misery, one must go to the English poor law union and the English district school for pauper children. Here he was herded together without schooling worth the name, without play provision, without wholesome work, suffering from infectious diseases, chiefly ophthalmia. The death rate was unbelievably high. Miss Florence Davenport-Hill estimates that on January 1, 1888, there were 268,369 pauper children in England and Wales. Of these 55,456 were receiving indoor care; 3,551 "boarded out"; 209,362 receiving outdoor relief. Of the

indoor children, 33,605 were orphans or others received without their parents; 7,253 were illegitimate offspring of workhouse inmates.[3] This army of little folk comprised almost one-third of the pauper problem of the kingdom. So unfavorable to the survival of most and to the upbringing of those who did survive was the workhouse that England in the '40's began the establishment of separate district schools for pauper children. It was generally understood that a child under two years of age committed to a workhouse had not more than ten months to live. At a time when the national child mortality rate stood around 1.5 per cent., an investigation of Cork Workhouse in 1859 showed a large number of children under 16 practically eaten alive with scrofula. Four out of five died. Conditions in North Dublin Union Workhouse were, if anything, worse. Practically all orphans and deserted children who entered that workhouse died there.

This high mortality appears to have been due not to lax management but rather to the system of herding children together. It is the record in all instances where children are congregated. If to the unusual opportunity for contagion and infection be added the wretched condition of the average foundling, deprived of its mother's milk, the combination practically means an early death. In the early days of the Massachusetts State Infirmary between 80 and 90 per cent. of all the foundlings sent there died within a year. Yet the administration of the Infirmary was scrupulously careful.

Conditions in Irish and English workhouses and in the district pauper schools were so bad that authority was finally given to the poor law authorities to board children out. The first enabling act for Ireland was passed in 1862. As showing the contrast in terms of mortality, the twenty-sixth report of the boarding-out committee of Cork Union, 1888, showed 1,073 children boarded out between 1862 and 1888. Of this number only 44 had died. By 1888, 105 of the 163 Irish Unions had adopted boarding-out, the children involved representing about one-fourth of the juvenile paupers of Ireland.

Workhouse care never made much of an inroad upon board-

[3] *Children of the State,* by Florence Davenport-Hill and Fanny Fowke, London, 1889, p. 3.

ing-out in Scotland. But in England the institutional system completely supplanted it, and continued for many decades, during which workhouse conditions became so bad that boarding-out was authorized again in sheer desperation. Early in the reign of George III an act was passed requiring registration of all children under four brought into the London workhouses. "The result of keeping these registers for five years," says Miss Davenport-Hill, "during which time the mortality reached 80, 90 and even cent per cent., was the passing of a further act." [4] This second statute authorized some boarding-out.

The various steps which England has adopted in her treatment of pauper children have included the original "fosterage"; unclassified workhouse care; workhouse care coupled with some attendance on schools removed from the workhouse; housing in separate district schools, which were only juvenile workhouses; smaller district schools misnamed cottage homes; certified homes run by private interests in which children have been kept at the expense of the guardians; emigration; and boarding-out on the modern plan. Thus the placement of children in family homes has been in England, as it has indeed been on the continent and as it has been in America, the fundamental method, varied by institutional panaceas.

Indenture in the United States—In the United States, the modern home finder is apt to look with scorn at the old practice of indenture and to insist that child-placing is a new enterprise born of modern standards and devised for the purpose of supplanting congregate institutional care. The facts are quite otherwise. Child-placing whether by "fosterage" of olden times; or by indenture of our colonial and provincial days; or by modern child placement at board and in free homes, involves the same fundamental characteristics, namely, the readjustment of the child to a single family home status in substitution for such a status lost or never enjoyed by him. This basic quality obtains, whether the little fellow be rented out for what his labor will bring, or auctioned off to the lowest bidder, or bound out to serve faithfully or boarded in accord-

[4] *Children of the State*, p. 9.

ance with the highest standards of modern child care. Its value varies in degree, not in kind.

Early Colonial Practice: New England—In the early American settlement there were no almshouses. When children became dependent upon the public therefore, especially foundlings and others without relatives, the natural course was resorted to. They were boarded out. Thus when little Benny Eaton stood up before the world alone in Plymouth Colony in 1636 the governor and assistants indentured him "to Bridget Fuller, widow, for 14 years, shee being to keep him at schools 2 years, & to employ him after in shuch service as she saw good & he should be fitt for; but not to turne him over to any other, without y^e^ gov^r^ consente." [5]

For the child with parents or relatives the early method was outdoor poor relief. He was not differentiated from his family group. It was only when he was left without relatives or friends that the government was forced to special measures. In the Boston Town Records for March 25, 1672, we find the following order:

"It was ordered that notice be given to the seuerall psons underwritten that they within one moneth after the date hereof dispose of theire seuerall children (herein nominated or mentioned) abroad for servants, to serue by indentures for some terme of yeares, accordinge to theire ages and capacities; w^ch^ if they refuse or neglegt to doe the magistrates and selectmen will take theire said children from them, and place them with such masters as they shall prouide accordinge as the law directs, and that they doe accordinge to this ord^r^ dispose of theire children doe make returne of the names of mast^rs^ & children soe put out to seruice, with their indentures to the Selectmen at their next monethly meetinge being the last Monday in Aprill next." [6]

In spite of the fact that almshouses came into use in New England as early as 1700 and soon began to house numbers of pauper children, the practice of binding out was in constant use until supplanted by the better social methods of very recent

[5] Rec. Plym. Col. Shurtleff, Vol. I, p. 36. For an extended statement of the history of child care in Mass., see the author's, *History of Public Poor Relief in Mass.*, pp. 165 ff.

[6] Boston Town Records, VII Rep. Rec. Com., p. 67.

times. Ashburnham, Massachusetts, a full century after the Boston order just quoted, bound out a negro boy in the following terms:

"Voted to vendue the negro boy, brought to the selectmen for the town to maintain, to some suitable man, the lowest bidder, and to give him for maintaining said boy one 7th part of the sum yearly until the whole is paid: said boy was struck off to Mr. Jno. Trask at £24:—Voted also that the selectmen should bind said boy to said Trask to serve him untill he arrives to the age of 21 years." [7]

Ashfield, in the same Commonwealth, in 1818 auctioned several children off to the lowest bidder, to be bound out until twenty-one years of age. The Town of Amherst in 1828 advertised for bidders for a couple of girls, aged eight and ten, on indenture until they should become eighteen.

The Method of Indenture Illustrated—These early methods seem harsh and unsympathetic. No doubt they were cruel enough, but essentially they left the child in a natural world, surrounded by natural persons, not more subject to contagious and infectious disease than other children in the neighborhood. The quaint terms of these old articles of indenture are worth remembering as a record of our first American form of the placing-out system. They probably echo in the stilted language of the early colonial law, just such admonitions as later child-placing visitors have many a time given to their charges. A good example is taken from the Malden, Massachusetts, Town records for 1748:

"This indenture witnesseth that Joseph Lynde Thos Wait John Dexter Stephen Pain and Joseph Wilson Selectmen, Overseers of the Poor of the town of Maldon in the County of Middlesex in New England by and with the consent of two of his Majesties Justices of the Peace for said county have plac'd and by these presents do place and bind out John Ramsdell a poor child, belonging to Maldon aforesd unto Edward Wait of Maldon in the County of Middlesex Yeoman and to his wife and Heirs and with them after the manner of an apprentice to dwell and serve from the day of the date of these Presents until the fifth day of April

[7] Ashburnham Town Records, 1792.

which will be in the year of our Lord One Thousand Seven Hundred and Sixty two at which time said Apprentice if living will arrive at the age of twenty one years during all which said time or term the said Apprentice his said Master and Mistress well and faithfully shall serve their Secrets he shall keep close their Commandments lawful and honest everywhere he shall gladly obey he shall do no Damage to his sd Master &c nor Suffer it to be done by others without letting or giving Seasonable notice thereof to his sd Master &c he shall not waste the goods of his said Master &c nor lend them unlawfully to any. At Cards, Dice or any other unlawful game or games he shall not play. Fornication he shall not commit. Matrimony he shall not contract. Taverns Ale Houses or places of gaming he shall not haunt or frequent. From the service of his sd master &c by day or night he shall not absent himself, but in all things and at all times he shall carry and behave himself towards his sd Master &c and all theirs as a good and faithful apprentice ought to do to his utmost ability during all the Time or term aforesd—and the said Master doth hereby covenant and agree for himself his wife and Heirs to teach or cause the sd Apprentice to be taught the Art and Mystery of a Cord wainer and also to read write and cipher. And also shall and will well and truly find allow unto and provide for the sd Apprentice sufficient and wholesome meat and drink, with washing Lodging and apparel and other necessaries meet and convenient for Such an Apprentice during all the time or term aforesd. And at the end and Expiration thereof shall dismiss the sd Apprentice with two good Suits of Apparel for all parts of his Body one for the Lords Day and the other for working-days Suitable to his Quality—In testimony whereof the sd parties have to these Indentures interchangeably Set their Hands and Seals the thirtieth day of April in the twenty first year of the Reign of our Sovereign Lord George the Second King of Great Britain &c—Annoq-Domini one Thousand Seven Hundred and forty eight.

Signed Sealed and Delivered in
the presence of

John Shute
John Wilson Edward Wait (LS)"

Defects of Binding-Out Process—This process of indenture, borrowed directly from the English poor law, was extensively used in many of the American colonies. Statutes

took formal notice of it in New York in 1754, Pennsylvania in 1771 and Maryland in 1797. The Massachusetts Statute of 1703 was only the culmination of several legislative expressions regarding it. Obviously a system by which children at the tender age of four, five, six and seven, are bound out until twenty-one by selectmen who never expected to see them again, must be fraught with grave chances of oppression and child slavery. In Virginia the Overseers of the Poor were required to report monthly to the county court all cases of children bound out. But in general the law took little notice of the child after the execution of a binding legal agreement between public authorities and would-be master. If the sound social sense now exercised in the best child placement had been used in the old indentures, it is hardly likely that private charitable effort would have set up the sympathetic but destructive orphan asylum as an alternative.

The first of these congregate establishments for the herding of orphans and homeless children appeared in 1727 and was attached to the Ursuline Convent at New Orleans. Another, the Bethesda Orphan House, was established at Savannah in 1738. At Philadelphia in 1798 was begun the work which soon developed into the St. Joseph Female Orphan Asylum. Baltimore began in 1799 and Boston in 1800. So that we find the nineteenth century opening with the public authorities either binding out or herding children in poorhouses, while private charity was beginning a strong gesture toward congregate institutional care.

Throughout the ensuing seventy-five years, the distinct trend of public care for dependent children in the United States was toward an increase in poorhouse and a decrease of outdoor care. New York City by 1823 had over 500 children in Bellevue Almshouse and about 4,000 aided by public outdoor relief. By this time a school department had been set up in connection with the almshouse. As early as 1805 appears an aldermanic order calling for such a school for the pauper children. By May, 1840, there were 900 children in the Long Island Farms whither the Bellevue Almshouse group had been transferred. In 1848 the entire troupe was removed again to the new Randall's Island Institution. At that time they numbered 1,054.

In this condition they represented the typical large city poorhouse with all its faults. The primary cause for the recent transfers was the presence of an epidemic of ophthalmia, that curse of the English workhouses. Conditions in New York went along with little change except that numbers kept mounting, until 1875, when the state by statute forbade the retention of able-bodied children in almshouses for more than sixty days unless accompanied by parent or relative.

In this interval down to 1866 boarding out "at nurse" had been extensively practiced by the Board of Governors. In that year the boarded-out charges were all returned to the almshouse and an infants' department set up where "foundling infants, hitherto distributed among the wards of the almshouse, and consigned to the mercies of reluctant attendants, have been gathered under the care of a matron and kind and attentive nurses."

But the death rate began to mount so that by 1871 the process of boarding out was again resorted to; only to be discontinued in 1890 and begun again on a small scale in 1898. In 1900 the system was extended to all foundlings coming directly under city care.[8]

Philadelphia as early as 1820 had set up a children's asylum apart from the almshouse, but fifteen years later sold the buildings and mingled the children again with her adult paupers. The primary reason for disposing of the asylum buildings appears to have been the high incidence of infectious diseases among the children. In this unclassified mixture they remained for another half century, a scrawny, sore-eyed example of unnecessary wretchedness. It was 1883 before Pennsylvania, following the lead of New York and Massachusetts, prohibited the retention of children between 2 and 16 in the almshouse.

Child Care in the American Poorhouse—Of the detriment which pauper children suffered in American poorhouses there can be no two opinions. The method had all the evils of

[8] For much in the early history of child care in the United States and in particular the New York system, the author is indebted to the able text written by Homer Folks in 1902, *The Care of Destitute, Neglected and Delinquent Children*.

congregate care plus the baneful influence of that miscellaneous company of lame, halt, blind, demented or vicious individuals who populated our poorhouses in the days when there was almost a complete lack of classification. Herded indiscriminately with adults, these little folk were penniless yet provided with the necessities of life without spurring their understanding or inclination regarding self-support. Usually they were distinguished from other children of the community by uniform or some other badge of their outcast class. Of constructive, character-building work or play there was none. Their school was usually an ungraded class in reading, writing and ciphering, presided over by a more likely female pauper. In such an atmosphere it is no wonder that experience with poorhouse children leads always to the belief that they are all stupid. From the worst among them and from the grownups they learned perversion and other vices. From their bedfellows and constant associates they caught diseases. It is small wonder that of the infants few survived, and of those who lived through, life's outlook offered nothing for which previous experience prepared them. Happy the girl or the boy who could face starvation and hardship in the open—who by some kind fate escaped the deadly influence of the poorhouse.

The way in which several states solved the problem was to forbid children in the almshouse, leaving the counties to care for them under the poor laws as best they might. A few jurisdictions sought to provide special care. Massachusetts, when the three state almshouses were founded, in 1854, removed unsettled pauper children to the institutions, a step probably no better than local care had been before since it herded large numbers together. In 1864 all the children were assembled in one of the three almshouses, that at Monson. Two years later this institution was declared to be the State Primary School, by which act it became the first separate state institution for destitute children in the United States.

Beginnings of the Massachusetts System of Foster Home Placement—The Board of State Charities had already experimented with an agent to visit children indentured from the state almshouses and reform schools, so that in 1869 a state visiting agency was set up to visit all children placed from state

institutions and to investigate the homes of all applicants for children. A third important duty of the visiting agent was that of attending all trials of juvenile offenders, to investigate the circumstances and to advise the court on disposition. These visitorial functions were the originals of that later system of foster home placement which has come to be known as the Massachusetts system. Thus by 1872 Massachusetts had separated the unsettled children among her paupers from the unclassified almshouse population. It was many years before much progress was made with the settled poor.

The State Primary School Plan—Meantime, and as the outstanding feature of this groping to rescue the child from the poorhouse, Michigan (May, 1874), followed shortly by Minnesota, Wisconsin, Rhode Island, Kansas, Colorado, Nebraska, Montana, Nevada and Texas, set up a state school as a temporary reservoir for the reception of dependent children from which they were to be placed out in foster family homes.

The Michigan plan, though copied from the Massachusetts experiment, was far superior in the fact that it included all dependent children. It was inferior in its failure to set up a visitorial mechanism. Experience has shown that such visitation when left to the counties, as in Michigan, is a failure. Though the experience of recent years has shown that there is no necessity for gathering dependent children into large groups where the contagions of vice and disease hold such sway, the state primary school was such an advance over anything previously existing as to stand out with epoch-making prominence in the history of child care. The Michigan founders builded well in that they constructed this first state school on the cottage plan, thus breaking the roster up into small groups and offering a maximum of safety from communicable diseases, while affording kindlier care under a house mother.

The state primary school as a system, however, suffers from all the weaknesses of the congregate institution. The important element in the system is the placing of children in foster family homes, but the institution, because of its concreteness, its insistence upon the attention of superintendent and other officials in the matter of appropriations, methods of construc-

tion and daily administration, quickly becomes the predominating factor to the neglect of the more important aspects of this scheme. Thus the Children's Bureau in 1925, in a study of indentures from the Wisconsin State School, finds but two field agents charged with the duty of visiting 500 placements throughout the wide territory of that large state. It finds no home-finding service at all. The school authorities wait passively until application is made for a child, almost invariably by a farmer who wants a youth to labor for him at less than market rates. It is a natural sequel that the Bureau should have found "that conditions in almost half of the 540 indentured homes, for which there was an apparently adequate basis of information, were not such as to be of benefit to the children placed in them." [9] Such placement provides homes with children instead of children with homes. The difference is not merely a play upon words.

As pointing again the weakness of a system in which a large state institution is intended theoretically to play a minor rôle, the tendency is always to use such a public receptacle for all sorts of wreckage. The Wisconsin School was at first designed for dependent children who were normal physically and mentally—such as were eligible for placement in foster family homes. But the legislature—as legislatures almost always will —soon opened it to any child in need of care—some of temporary care. The result was a rapid change in the complexion of the inmate body, through the addition of mental and physical handicaps, capable of home placement only under the most careful home-finding and supervision.

It is necessary only to erect a large institution in a system of child placement to find it immediately taking the center of the stage both in legislation and in administration to the detriment and partial atrophy of the vital elements of the system.

But this social advance from poorhouse to segregated care was far from universal. Popular government must reckon with politics before principles; and in the development of state systems of social welfare this means specifically that the county interest must be consulted first. Demonstrating this American

[9] U. S. Ch. Bureau. Publication No. 150, p. 111.

habit, a movement was inaugurated early in the process of closing the almshouse to dependent children, a movement by which the county became the unit of control.

The County Children's Home: Ohio—Ohio, in the early '60's, authorized the establishment of a children's home in each county of the state. Between 1864 and 1899, fifty of these local homes were opened. The enabling act included the feature of placing out, but this was not used. The homes amounted to juvenile poorhouses.

On April 25, 1901, fifty-one homes reported a total of 2,260 inmates. Their ages averaged slightly over 9 years. Their average stay in the institution was slightly over three years. At the same time these homes reported 1,186 children placed in families between January 1, 1900, and April 25, 1901.[10] Thus the popular process of placing out has had its day in the county home as well as in the state system but with the difference that the state system has usually a recognized policy while the county system, variously manned and managed, is incoherent and blind.

Connecticut and Indiana followed the leadership of Ohio. These states, like Ohio, have found it necessary to create a state-wide system of child care, which removes planning and the development of policy from county authorities and lodges it in a state department. The county home, like the state school, and less hampered in its complacency by not having a state system to propose new departures, has tended to disregard the idea of placement of its wards in family homes. The average trustee of a county home brings little but a modicum of sympathy to the deliberations of his board, and he usually has many interests other than those of the child to satisfy in the process of reception, treatment and discharge. The Connecticut State Board of Children's Guardians is making commendable progress with the county homes of that state but true progress cannot be expected until they are pulled down.

Public Support in Private Homes—Still a third substitute for poorhouse care, perhaps a degree safer for the health of the child but not otherwise praiseworthy, is the system of support in private orphan asylums at public expense. The

[10] See *The Care of Destitute, Neglected and Delinquent Children*, p. 105.

greatest offender in the use of this system is New York. Her chief imitators are California, Maryland and the District of Columbia.

The New York Subsidy System—New York early began the practice of subsidizing private charitable agencies. She granted $500 to the New York Orphan Asylum in 1811, and a like amount to the Roman Catholic Orphan Asylum in 1817. The House of Refuge, for juvenile offenders, organized in 1824, was supported largely out of state funds. By 1874, when an amendment to the state constitution prohibited state subsidies of this description, a total of $910,000 was going annually out of public taxes to private charitable agencies. By this time also cities and towns had extensively followed the example.

At this interesting juncture came the children's law directing that children be removed from the almshouse and placed either in foster family homes or in institutions for children. Here was the opportunity for the previously state-fostered orphanages. The state subsidy was discontinued as such, but immediately appeared in the form of per capita maintenance for public wards cared for by the private agencies. Of 34,729 dependent children in New York State on September 30, 1899, says Folks, "only 1,186 were in public institutions. Of these 825 were in a state reformatory and 112 were in a state asylum for Indian children." [11] As might be expected, this system nourished itself. Between 1875 and 1900 the general population of the State of New York increased 55 per cent., while in the same period the population of private asylums supported by the state increased 139 per cent.

Such a system has no room for placing out since the placed-out child does not pay the good hard "per capita" collectible for the inmate. The New York institutions do very little child placing. Children are turned back to their relatives, for the most part, upon reaching self-supporting age. The tendency of the private home is, of course, to take all the public charges it can get and keep them as long as it can. In this particular the sectarian homes are the worst offenders.

The Ineffectiveness of New Constitutional Barriers—Latterly New York has had to lodge some control of this

[11] *The Care of Destitute, Neglected and Delinquent Children,* p. 120.

wasteful pauperizing system in its State Board of Charities. Many states, like New York, in their alarm at the increasing political power of church denominations, have set up constitutional barriers to public subsidy; but this provision has been circumvented easily by the simple plan of delegating the care of the individual dependent to the private agency at public expense. The condition is one stage more objectionable than the former subsidy. As a basic principle of governmental administration it may be stated that public appropriations never should go where public control does not follow. The principle is not violated by the payment of board for public dependents in family homes, where home values are obtained that cannot be supplied otherwise and where public supervision is freely exercised; but in the support of dependent children in congregate homes that are duplicates in every way of the facilities which the government itself is able to provide, it does discountenance the principle. It sets up a private group interest and maintains it at public expense. By it, government in effect delegates its functions to an interested group who are required to furnish no guarantees of real worth that they will carry them out as the government should have done. In theory a private charitable orphans' home is a public charitable trust, performing a duty in the interests of the whole of Society. In fact it is an inner circle of persons more interested in a cult or dogma or philosophy of social work than they are in governmental service. A government of the people cannot function through them with the expectation of complete justice to the cause of Society.

If this reasoning is correct, the subsidy and delegated support plans are passing phases in child care. The public will continue to receive the vision of child care methods from private interests, but it will make haste in these next decades to run its own business in the care of its dependent children.

Direct Placement in Foster Homes—As the approved method thus far evolved in the care of dependent children, the placing of them in foster family homes, without the hazards of large congregate homes, is now accepted. Though placing out in free homes or at board is practiced in some form by most children's institutions to-day, the scientific process of home

finding, placement and supervision is a relatively new thing and still applies to but a small fraction of the children of America who are dependent upon the people for support. It is a logical evolution from the experimentation of the past, rather than a new idea spreading merely by imitation.

Essentially, the natural place for the child is in the family home, under the protection and leadership of father and mother. For the child who has lost his parents through death, abandonment, the action of the law, or any other cause, this normal niche in life is closed. It is the simplest step in reasoning to argue that the next best thing for such an underprivileged child is some other family home that will give him kindly upbringing. Sympathy wells spontaneously for the child; and many homes not blessed with hoped-for children of their own would turn to adoptive children if they could be sure that their love and confidence would not be misplaced. All that the world needed was such a method of finding the child and the home that fit naturally together; that would guarantee the little fellow's protection and discourage the exploiter.

Evolution of Placement—Ancient "fosterage" commended the child to the mercies of the volunteer foster mother but took no further account of its welfare. Indenture was a commercial bargain based upon the theory that every individual in the state must work his way, and if he is dependent, the public may well enough bind him to a term of service by contract. He was plentifully admonished to be good and his contractor gave some written guarantee that he would receive some schooling and have clothes with which to make his start in life after term. But nothing else was done for him.

Then came the practice—a line of least resistance—which threw him into the unsorted mass of poorhouse inmates, where the children of paupers who were still with their parents found lodgment. Having the poorhouses, it was simple enough to leave the dependent child there. He didn't cost much. He could do chores. Altogether he reduced the average per capita cost of the place. And more important still, the authorities responsible for him knew just where to find him. They retained complete control. As shown by the fact that large numbers of poorhouse children were withdrawn by parents when

separate institutions were set up at a distance away from the locality, a still further reason was the desire of parents to secure public support for their children during the years of their helplessness and until they should reach the age of ability to work.

The orphan asylum sprang out of sympathy for the poorhouse waif and a desire to assemble these little folk in the interests of their spiritual and moral upbringing. It was a revolt against the unspeakable poorhouse. It was founded upon a sincere but misplaced philosophy of child welfare. It is not the first time in history that the body has been neglected for the good of the soul. But the true interests of the child begin with his stomach and radiate from there to his social relationships. His material being must be satisfied before much progress can be made in his spiritual development. Hence it is that after three-quarters of a century of this folly, the world returns to its original logic that "home life is the highest and finest product of civilization. Children should not be deprived of it except for urgent and compelling reasons." [12]

The Massachusetts System of Foster Home Placements—This modern phase of the foster home system is best described in the experience of Massachusetts. In 1867 Dr. Samuel Gridley Howe, Chairman of the State Board of Charity, and Frank B. Sanborn, its Secretary, inaugurated the systematic placement of state minor wards. The children from the state almshouses at Bridgewater and Tewksbury, having been previously assembled in the State Almshouse at Monson, that institution was declared in 1866 to be the Massachusetts State Primary School. Dr. Howe and Mr. Sanborn now brought about the creation of a visiting agent to visit all children placed out from the state almshouses and the reform schools. In thus beginning what was to become famous as a process of finding homes for dependent children, they were undoubtedly largely influenced by the developing standards of the Boston Children's Aid Society, then in its third year.

In 1872 the almshouse department, which had continued on at Monson, was abolished and the system of actual visitation of homes and attendance upon courts as a friend of the child

[12] *Findings of the White House Conference,* 1909. U. S. Gov. Sen. Doc. 721.

became an accomplished fact. But it applied only to unsettled children who were dependents of the state.

The next stage of growth was the disappearance of the state visiting agency as an independent institution and the assignment of its duties to the State Board of Health, Lunacy and Charity. This occurred in 1879. In 1882 the legislature formally sanctioned placing out children from the Monson School, and authorized courts to commit neglected children directly to the State Board itself. The tendency to commit dependents only to definite prisons or detention places where their whereabouts are known and their term definite is so strong in the Anglo-Saxon mind, that this plan of commitment of juveniles to a State Board without specification of place may be accepted as epoch-making in New England jurisprudence.

Placement from the State Primary School went on at a rapid rate and at the same time the courts were committing foundlings and neglects directly to the State Board. The population of Monson fell from 485 children in 1876 to 121 in 1894. Meanwhile the number boarded in families jumped from 582 in 1876 to 1,459 in 1894. The process of home finding and placement made possible the next vital step in the evolution of the Massachusetts system,—the abolition of the State Primary School.

In 1895 the plant at Monson was taken over as a hospital for epileptics and the school for children discontinued. Since that date Massachusetts has placed her state minor wards directly in families without the intermediary of a state home. The Division of Child Guardianship has for years maintained several shelters for from five to twenty children as temporary reservoirs where a child may receive its physical and mental examination and in which he may stay for the few days or even weeks until ready for placement. No children under three are placed in these temporary shelters. Where such infants need overnight detention it is given in a small nursery presided over by a trained nurse. Seldom more than two infants remain in the nursery together over night. All children committed to the Department of Public Welfare are wards of the state and remain so until twenty-one, no matter where or how placed and no matter whether married or adopted.

Settled Children Not Included Legally in the State Plan—By a wise policy of placing settled children at the request of local overseers, the State Board finally acquired such a reputation for helpfulness that the local authorities were glad to avail themselves of the skill of the state staff. Already the state had power to undo unwise local placements and to do the work over again at local expense. In theory to-day the town has independent rights in dealing with its dependent children, but in practice the state system absorbs most of the child care problem outside of Boston. That city still places its own children.

The Massachusetts State Division of Child Guardianship at present (1927) comprises a director and staff of ninety-six persons, organized in two main divisions; one of which looks after infants under three and the other has charge of all wards over that age. One supervisor and six visitors give all their time to the investigation of applications for admission to state care. This is the principal check which Massachusetts sets upon the undeniable desire of some parents to secure state care for their children through the years of natural dependency. These visitors are true friends of the children. They look upon state care as a last resort, and work with the numerous private agencies of their community in staving it off by setting up other places of rehabilitation.

The babies are looked after by four nurses under the direction of a supervising nurse. The appalling infant mortality of the ancient workhouse and the modern orphan asylum is unknown in Massachusetts, where the death rate among state infants is less than 3 per cent., a rate considerably below that of infants in the general population. The rate for infants under one year is less than 7 per cent. Again this is below the general population rate, even though the children taken by the state are an underprivileged group, many of whom have little better than a fighting chance to survive. Contrasted with the year 1867, when ninety-seven out of a hundred infants of the same quality and condition sent to congregate care in the nursery at the Tewksbury State Almshouse died in their first year, this record must spell a difference in values in the systems employed.

In this state grist is a persistently steady percentage of feeble-minded children received as babies, at a time when the defect was not apparent. For each of these application is made at once for admittance to a state school for the feeble-minded, if institutional care is indicated as a part of the constructive plan. One special visitor looks after these children, her duty relating solely to defectives.

The age group between three and twelve is in charge of a staff of fifteen visitors under one supervisor. For girls above that age a corps of fourteen visitors under a supervisor have full charge. A like group of fifteen men visitors and a supervisor direct the older boys.

So important is adoption considered in the life of a state ward that a special adoption agent is employed, not to bring about adoptions but to investigate all the details of proposed adoptions and, where the Department approves, to carry the proceedings as far as the probate court where an attorney in the employ of the Division takes up the legal aspect of the case and represents the child. Adoptions are not sanctioned in any case until after a year's trial of the child in the home of the adoptive parents. The child, even after adoption, still remains a ward of the state and may be taken from the adoptive parent if the Department is not satisfied with its treatment.

A physician is employed by the Division. He gives routine physical examinations in all cases. Mental examinations are not given as a matter of routine. But wherever a doubt exists as to the child's condition, or as to the wisdom of a proposed plan involving it and calling for intelligence which it is feared the child may not possess, such examinations are provided. In this connection, the process of mental examination is so frequent among child groups in Massachusetts that the state is not thus far hampered by the dumping of defective children upon it.

With this equipment for intelligent child care, this Commonwealth is able to perform a scientific task. It is sadly hampered for lack of visitors, a quantitative rather than a qualitative defect, but in spite of this handicap, state care in Massachusetts compares favorably with the best child placing of private agencies and is far superior to most. On March 1, 1927, there were in the care of the State Division of Child Guardianship

as state wards 5,892 children. In addition to these, 1,659 were in public institutions as juvenile offenders, mental defectives, physical handicaps, and children ill with contagious diseases. There were 388 infants, under three, of whom 23 were in free homes and 365 were in boarding homes. Of the 4,504 children over three, 3,165 were at board in foster homes, 204 were in homes where only a fraction of the board was paid by the state, 72 were in the five temporary shelters awaiting placement.

In 1924, when numbers were as great as at present and when the cost of living was fully as high, the Commonwealth paid $1,158,796.29 for the support and operation of its Division of Child Guardianship. To this sum should be added the cost of those state wards given care in state institutions and supported out of other appropriations. But at this figure the total cost falls measurably below half of the usual institutional care for a like number of children. Of this total outlay $837,731.13 went for board, clothing and other expenses of the children themselves; $145,162.09 paid for the salaries and expenses of the Division staff; while $171,868.75 was paid out of the state treasury into the treasuries of the several cities and towns of the state in tuition for schooling given to state wards in the public schools.

In spite of this sensible service to childhood in the oldest public welfare laboratory in the United States, the individuality of the New Englander is so potent, and the love of self-determination, in his own Village and Peculiar, is so great that to this day the overseer of the poor of any one of the 354 cities and towns of Massachusetts is empowered under the law to make independent disposition of pauper children. He is forbidden to lodge such a child at the almshouse unless it is with its parent, and it is subject to visitation by the state department which has power of removal from the surroundings in which the state visitor finds it if those conditions are not satisfactory to the state, the department then placing it at the expense of the town. But in practice few children are summarily removed. In 1926 the state staff thus visited some 1,200 children placed out by the various localities. Of these 400 had been placed by the city of Boston. That city, followed

by Worcester and New Bedford, prefers to look after its own children. Lawrence is in the wavering class. Elsewhere, the attitude is one of friendly reliance upon the state service in the placement of dependent children. At present the towns reimburse the state at the rate of $5 a week for taking their dependent children and placing them along with other state wards.

At the beginning of this chapter a dividing line was drawn for convenience between the three groups of children, the "dependent," the "neglected," and the "delinquent." Of course, the generic grouping is that of dependency. To employ the syllogistic phrase of the logicians, of these three classes A, B and C, all B is A and all but a vanishing per cent. of C is either A or B. That is to say, a delinquent child is pretty sure to be either neglected or dependent, pretty certainly both, and a child having no power of self-support becomes dependent as soon as he is neglected. So nearly identical are the three groups, that the neglected and the dependent children have in most jurisdictions been thrown in with the delinquent in the grist of the juvenile court greatly to the confusion of our jurisprudence.

For the purposes of this treatise, the delinquent is discussed separately and in connection with that system—slowly evolving through the reformatory, probation and the juvenile court—by which modern society has come to understand delinquent childhood better and to serve him to worthier purpose. The neglected group, dealt with in the next chapter, is singled out in order to identify such protective measures as have been set up to defend childhood from the cruelties of those who should love and cherish it.

## FOR THE STIMULATION OF THOUGHT

1. Why is the development of foster home placement for dependent children so slow? Do you assume, from the position taken in the text, that congregate care for dependent children is inexpedient in all cases where the children are physically and mentally normal? What is the sound relationship of the "Home" to the placing-out system?

2. The County Homes of Connecticut are now being used as temporary homes in a plan of foster home placement. Is it possible through any considerable lapse of time to stave off the political tendency to

fill a public receptacle in order to get it full, whenever such is provided for the care of the individual?

3. What are the legal and the historical reasons why a child, wholly free from delinquency, guilty of no offense, and victim of the single circumstance that his normal means of support have failed and he has found no other, is brought into a court and "committed" to an institution which takes full custody of his person? Compare the author's analysis of the nature of the Juvenile Court, Chapter XXIV, *post*.

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## CHAPTER XXIII

## THE NEGLECTED CHILD

The individualistic American community said little and did less about parental cruelty so long as the child did not thereby come to want and require public support. The Bay Colony in 1642 directed the local selectmen to keep a vigilant eye "that all parents and masters do breed and bring up their children and apprentices in some honest, lawful calling, labor or employment, either in husbandry or some other trade, profitable for themselves and the Commonwealth, if they will not or cannot train them up in learning, to fit them for higher employments." [1]

The animus behind this order was not a virtuous wish that parents would be kind to their children and provide them with opportunities for learning; it was to stave off the likelihood of pauper aid.

In 1735 a Massachusetts statute authorized the Town of Boston to bind out the children of persons who are "unable, or neglect to provide necessaries for the sustenance and support of their children." Down to 1825 numerous American statutes appear authorizing the binding out or the almshouse care of beggar children and the children of beggars. But such measures recked little of the neglect; cared little for the happiness and the future life of such children. They were seeking to avoid the spending of public money for poor relief. These were preventive poor laws, not child welfare laws.

But as the century wore into the '20's a new attitude appears in the public thinking about the neglect of children. In 1833 a charter amendment for New York City authorized the mayor, recorder, or any two aldermen, or two special justices to commit to the almshouse or other suitable place, for labor and instruction, any child found in suffering or in want or abandoned or neglected by its parents, or begging.

[1] Ancient Charters and Laws of Mass. (Boston, 1814), Ch. XXII, p. 73.

In 1866 began that series of Massachusetts laws for the protection of children which has made possible such progress by the state department. It was in that year enacted that children under sixteen, *who by reason of the neglect, crime, drunkenness, or other vices of their parents, are suffered to grow up without salutary parental control or education* or in circumstances exposing them to lead idle and dissolute lives, might be committed to an appropriate place designated by the city. In 1882 the commitment of neglected children directly to the State Board of Charity was authorized.

Because the neglected child was so frequently the delinquent child as well, it became a practice to commit neglects to reformatories. The New York penal code of 1880 authorizes the commitment of various classes of neglected children "to any incorporated charitable or reformatory institution." The writer recalls a visit with the mayor of a city to a boys' reformatory in a northwestern state, as late as 1913, where his honor explained with pride that the single barrack contained one hundred boys, fifty of whom were "toughs" committed from the court, and fifty of whom were just poor, and sent by the court because they had no homes to go to. The idea in the arrangement was to reform the bad boys by association day and night with the little chaps who were good but destitute! Sending dependent and neglected children through the process of a court of law is another phase of the same fallacy.

Beginnings of Modern Child Care—In the latter '60's, during the desperate years following the Civil War, public attention turned like a tide toward questions of human wretchedness. The soldier's orphan was a problem for whose rational rehabilitation the public mind was ill prepared. In the end we stowed him in castellated orphanages which still dot the landscape like mausoleums; and once established, so hardy and enduring have they been that they contain more children to-day than they did a half century ago. In some instances they have become state-wide institutions for all dependent children. Most of them are now free boarding schools for the children of indigent soldiers.

Societies for the Prevention of Cruelty to Children—The most important child welfare development in those

reconstruction years, when money was struggling back to a specie basis and when poverty was abroad in the land, came from private citizens and took the form of associations for the purpose of protecting children from cruelty and neglect. The New York Society was founded in 1875. Its aim was to see to it that the New York laws relating to cruelty were enforced. It sought out cases of abuse. In addition it placed agents in the courts who investigated cases involving children, whether for destitution, cruelty, neglect or waywardness. In this way it became an advisor to the court not only on the question of commitment but also upon the place of commitment if made. Later the courts began to place children with the society pending investigation, and its agents were given the powers of peace officers. Regarding this society and its influence Folks considers that by 1890 it had become the controlling factor in the reception and disposition of the fifteen thousand destitute and neglected children who came to public support each year.[2]

In 1878 the Massachusetts Society was incorporated. Its object was to prevent physical injury and neglect; to rescue children from immoral and contaminating surroundings; to remove them when necessary and find better homes for them through coöperating child care agencies; to secure suitable guardians for those without natural or other protectors; and to bring home to the public the consequences of child neglect and the existing need for prevention. It was thus a case work agency in the child care field. Its business, like that of the New York Society, was the quasi-public function of seeing to it that the laws relating to the care and treatment of children were enforced. But it went further than the New York agency has ever done, in seeing the case through to rehabilitation.

In 1924 the Massachusetts Society handled instances of abuse, cruelty and neglect involving 13,029 children. Of them the Executive Secretary says in his annual report: "They were children subjected to brutality and outrage, or who, because of the downright culpable neglect of their parents, were seriously neglected physically, medically or morally."

Following the lead of these purposeful agencies, it began to

[2] See *The Care of Destitute, Neglected and Delinquent Children,* p. 175.

enter the consciousness of societies for the prevention of cruelty to animals that to the process of keeping a man from abusing his ox and his ass—a virtuous work in which they had all been engaged for a good many years—they might now add the less important animal, his child. They even admitted the "child cruelty" societies into their national body, the American Humane Association; though not till after it had been in operation for a decade. They continued to carry on the new branch with increasing interest. Meantime more societies for the sole purpose of protecting children came into being, some of which, like Philadelphia, New York, Wilmington and Brooklyn, received aid also from public funds. By 1900 the New York Society listed 161 agencies throughout the United States carrying on this form of child protection. Their influence upon child care even down to the present has rather favored institutional care as against foster home care. The New York Society, for example, in 1900 placed six children out in the community, and through its recommendation caused the commitment of 2,407 to institutions.

In two states, Colorado and Indiana, this public function of law enforcement has been lodged in governmental boards. In the former jurisdiction the already existing humane society was made a state board, and in the latter (1901) county boards of children's guardians have been authorized for all counties, each charged with the duty of protecting children from cruelty.

It will be noticed in this process of child protection that little if any influence has been exerted upon the final disposition of the case, though many a child has by the efforts of the law-enforcement societies been saved from public dependency. The dependency, once granted, the little fellow goes his way with others of his dependent fellows, for at this stage he is a dependent who only happened to come to dependency through neglect or abuse. Where he has landed in a reformatory he might well complain that the sins of his parents were handed down and that the cruelty still pursued him.

At this point it is pertinent to mention four special groups of this broad class of children who are in need of special care and to indicate the present method of dealing with them. They are the illegitimate, the blind, the crippled and the deaf.

THE ILLEGITIMATE CHILD—The illegitimate, dug from the ash barrel in an alley, discovered on a doorstep, or delivered at the almshouse, has always had to take his chances with other public dependents. As we have seen, he was as good as knocked on the head when public authorities sent him to the old-time poorhouse. Without mother's milk and nursing care, with contagion and infection awaiting him, he had two or three chances in a hundred or none at all.

But an illegitimate child is as much a child, as much a potential citizen, as much a prospective parent of still other children as any other issue of the human family. He differs from the rest only in that he has not the social setting comprised in the family. Lacking this natural home, he is peculiarly the helpless charge of the whole people through their government.

For centuries the mother of an illegitimate child has had a cause of action at law which for the most part has been enforced on a quasi-criminal basis. The alleged father could be arrested. But the child himself—the real victim of the illegal sex relationship—has had no claim. He has been only the "increase," so to speak. Massachusetts in 1913[3] passed an act making illegitimate paternity a crime and imposing upon the putative father the full support of his child during its minority in the same manner as though it were legitimate. In most jurisdictions the father may still escape his responsibilities by the payment of a lump sum, usually not more than sufficient to pay court costs, counsels' fees and a few dollars on the mother's expenses for lying-in. North Dakota in 1917 and Arizona in 1921 declared every child to be the legitimate issue of its natural parents. Iowa, Missouri and Wisconsin permit inheritance from the father where paternity has been established in his lifetime.

The illegitimate child holds no other relationship to the public than that of prospective dependent to be gathered up into the almshouse or the state primary school or the State Department of Public Welfare and there receive such care as may be provided for dependents. And this in spite of the

[3] Mass. Acts, 1913, Ch. 563.

fact that the illegitimate child is by definition deprived of his natural matrix out of which to grow into competent citizenship. This dilemma has been faced at least by the Minnesota law which declares every illegitimate child *ipso facto* to be a ward of the state.[4]

Blind Children—The blind call for specialized care in order that they may be taught trades and occupations at which they may support themselves in whole or at least in part. For this purpose, schools for the blind have existed in the United States for many years but in most instances these have arisen out of private initiative and been maintained without support from public funds. Some states, like Ohio and Missouri, have established pensions for the blind, thus including blind children in this process of public relief. But as a general statement, the care of blind children has been pauper care, sometimes with the addition of support at public expense in a special school for the blind. In 1898 Ohio [5] added to her poor laws a provision for a lump sum not exceeding $100 to each blind person entitled to poor relief. In 1904 [6] this act was repealed and a pension law for the blind was enacted. This new act was declared unconstitutional. A third statute, passed in 1908, has been upheld by the supreme court, and with an amendment of 1913 stands as the Ohio law.

The modern tendency is to establish educational facilities for the vocational training of blind persons, and to set up state plans for the prevention of ophthalmia neonatorum.

The one particular in which modern government has taken advanced ground in dealing with the problem of blindness has been the requirement in some states that a prophylactic shall be used in the eyes of all new-born infants immediately upon birth. Massachusetts makes this requirement, to which she adds the licensing of all lying-in hospitals, and provides the prophylactic from her state health laboratories free of charge.

The Deaf—Deaf children have not been differentiated from paupers as a regular practice. Massachusetts as early as 1870

[4] Minnesota Laws, 1917, Chaps. 194, 210, 212.
[5] Ohio Laws, § 1491 a.
[6] Ohio Laws (97 OR).

set up a system by which she might send deaf children to any of the three private schools for the blind, namely, Hartford, Connecticut, Northampton and Beverly, but no separate state institution was ever erected.

Crippled Children—The dependent child who is so badly handicapped physically that he cannot attend public school and has slight chance to make a go of it if left free with his normal fellows, has a hard time of it in the almshouse. There is no schooling there and no vocational training for his special case. The problem has been attacked thus far chiefly through the orthopedic hospital. The Massachusetts Hospital School is worthy of note in this connection as a step beyond the orthopedic department. It is a boarding school for crippled children on a thoroughgoing hospital basis. Its children, chiefly the after effects of infantile paralysis and Pott's disease, are given careful vocational training. They become dressmakers, tailors, lace-makers, engineers and a wide variety of other professional and trade callings. Since this institution was opened in 1907 it has turned out graduates with never less than a high school diploma, each one trained to a trade or occupation through which he or she will be able to earn support in whole or in part. Due to careful training, these graduates in almost every instance have a job to go to immediately upon discharge. It is a noteworthy instance of what can be done for the crippled child. But it is a solitary instance. The traveler will find most of these youthful handicaps in almshouses or other wreckage dumps where little or nothing is being done to salvage them for self-support and citizenship.

Principles of Care and Treatment of Dependent and Neglected Children—Experience has made evident already a valid code of principles which should govern the care and treatment of dependent and neglected children. The care and treatment of childhood is the field of greatest promise for preventive and remedial social service. The welfare of society hangs upon the well-being and the potentiality of its children. The child is the State. The first principle therefore is that

1. *The conservation of childhood should be the first concern of all commonwealths.*

2. *The program for such conservation should be state-wide and in charge of a department of public welfare and in a division conducted for that sole purpose.*

As children herded together in congregate systems of care invariably show a high morbidity and death rate,

3. *Dependent children coming to the public for support should not be cared for in institutions except for special treatment necessary and not practicable elsewhere.*

4. *They never should be cared for in almshouses except for the most temporary periods when accompanied by a parent.*

As dependent children are not offenders,

5. *They should not be disposed of through courts, and should not be mingled with delinquents.*

As family home life is the normal condition of childhood,

6. *The child should not be separated from his home because of destitution alone.*

7. *Where such removal is necessary for other causes, or where for any reason the child has no such home he should be placed out by the state authority in a foster family home on such terms and under such conditions as best serve his welfare.*

8. *In the process of placement, homes should be sought through the efforts of trained workers and should be supervised by similar means throughout the period of the child's stay.*

As adoption is an artificial status, created by statute and void unless all material requirements of the law are complied with,

9. *Adoptions should be carried through with the greatest care to the end that the child's future may not be impaired through lack of care.*

Because adoption is an unnatural status and concerns the child's welfare so vitally,

10. *No petition should be heard by the court without thorough investigation in all cases and, only in the most exceptional instances, without the presence of both adoptive parents and the child at the hearing.*

11. *Adoption should not be encouraged until after a period of trial long enough to provide reasonable guarantees of sound economic support, good social prospect, and a genuine bond of affection.*

As the operations of child caring agencies are of vital concern to the welfare of the children and therefore of profound concern to society,

12. *The state should exercise supervision over all such agencies, with power to require satisfactory standards of work.*

As no child is a party to his own neglect by those responsible for his care,

13. *The neglected child should be treated as a dependent merely and should not be disposed of through courts or "committed" with delinquents.*

14. *Illegitimate parentage should be declared by law to constitute a crime.*

15. *The illegitimate child should by the fact of his illegitimate birth be a ward of the state which should have authority in all cases to institute proceedings to establish paternity.*

16. *The father and the mother of an illegitimate child, after legal adjudication of such parentage, should be liable for its support as in the case of legitimate children; and such child should have legal rights of inheritance.*

17. *Where practicable and otherwise expedient, the mother of an illegitimate child should be required to keep it with her during the nursing period and to breast feed it.*

18. *All lying-in hospitals and boarding homes, in which illegitimate children are delivered or placed, should be licensed and supervised by the state.*

19. *Special handicaps, such as the crippled, the blind and the deaf, among dependent and neglected children should be given special vocational training in connection with such hospital or infirmary care as their condition may require, to the end that they may be sent out into life as able to support themselves as their limited powers permit.*

## FOR THE STIMULATION OF THOUGHT

1. Why should government permit private citizens, under the auspices of a charity charter, to carry on the enforcement of the laws relating to child care? Are societies for the prevention of cruelty to children a passing phase in the science of public welfare?

2. Should the government, representing the whole people, stand *in loco parentis* to every illegitimate child *ipso facto?*

3. What is the chief evil in illegitimacy? What is society's principal concern regarding it?

4. A moderate pension for the blind costs less than a thoroughgoing system of training in vocational occupations. Does the proper interest of Society in the blind lie in their humane relief, or in their rehabilitation up to the possibilities of their handicap? The consumers are the taxpayers.

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## CHAPTER XXIV

# DELINQUENT CHILDREN: THE JUVENILE COURT

Our public attitude toward juvenile delinquency has been greatly colored by the precedents of criminal jurisprudence. At common law a child under seven is deemed incapable of crime. Between seven and fourteen he was presumed incapable, subject to proof to the contrary in the individual case. At fourteen he is responsible in the degree of full manhood. In dealing with the criminal conduct of youth, therefore, we sent him to jail or to prison just as we sent adults. By the opening of the nineteenth century there was not a separate institution for juvenile offenders to be found in the United States. In 1825 the New York House of Refuge was established by private citizens in New York City and within six years became a public institution, the first of its kind in the country.

In the century succeeding that innovation the record of public treatment of the delinquent child has been a progress from jail and prison at the outset to separate juvenile prisons or refuges in the first quarter of that century; to juvenile reformatories in the second quarter; to probation and parole in the third; and through these newer instruments, to the psychiatric clinic, and the individual treatment of the present.

The purpose of the first house of refuge was to provide separate quarters for the juvenile inmates of the city prison; to offer a depository for commitments directly from the court; to offer asylum for neglected children who were found begging; to receive youthful convicts upon their discharge from prison; and finally to create a refuge for wayward but hopeful female children. This hopeless mixture, judged by present-day standards, was a gesture far in advance of the social thinking of those earlier days. The New York House farmed out the labor of its inmates under the contract system. It used the

cell block; it offered no industrial training or instruction. It employed corporal punishment. It was a prison of the usual type, limited to juveniles.

Boston House of Refuge—The second house of refuge was set up by the city of Boston in 1826. It was called the House of Reformation and was located within the walls of the House of Correction for adults. In 1837 it was removed to a separate building near by. Girls, removed from this segregated prison during the interval of a single year, under the influence of Samuel Gridley Howe, were kept in the same barrack, as at the New York House. After years of vicissitude, in 1851 the commitment of truants was authorized. In 1858 the plant was removed to Deer Island in Boston Harbor, and in 1860 a separate building for girls was set up on the same tract. The department for girls was closed and in 1895 the entire institution was removed to Rainsford Island where it continued as a boys' school until 1920, when it was discontinued and the class of boys formerly sent there deflected to the State Training Schools.

The third juvenile reformatory was the Philadelphia House of Refuge, a private enterprise opened November 29, 1828. Though professing itself "a work of charity and mercy," it was in fact a juvenile prison. The financial support was early assumed by city and state. In 1892 this ancient institution was removed to Glen Mills where it became a modern reformatory or training school constructed on the cottage plan, with boys' and girls' departments completely separated.

In this manner the public practice of segregating juveniles from adults in prison came to be a fact. After one more city refuge, that of New Orleans in 1847, a notable step was taken by a state government. Massachusetts opened the Lyman School for Boys November 1, 1848. The movement had been broached in the legislature for some time but hung fire because of the expense. At this juncture the Hon. Theodore Lyman of Boston tendered a gift of $20,000 which represented a considerable part of the probable cost of construction.

The plant, built after the old style prison barrack, was in fact a prison. Doors were bolted; windows barred; dormitories were tiers of cells in effect; while "solitary" cast its long

shadow in to the spirit of the place as it had always done in the penitentiary.

In 1859 the plant was providentially destroyed by fire. In the rebuilding, though the new State Reform School at Lancaster, Ohio, was already in operation on the cottage plan, the main barrack was again set up as a congregate prison. The cottage family plan, however, was tried to the extent of three separate groups of thirty boys each.

The age limit for commitment to this school was set at sixteen and the term at minority; but an alternative sentence for a shorter term to some other penal institution was allowed. In 1859 this alternative sentence was discontinued and a nautical branch, comprising a school-ship, was inaugurated. In 1872 the school-ship was discontinued and the commitment age limit raised to seventeen, an unwise provision which continued until 1884 when the State Reformatory at Concord was opened. In this latter year the entire plant was removed from its old site and placed on a thorough cottage-plan basis. The commitment age was lowered to fifteen where it has since remained.

In 1856 Massachusetts opened an identical school for girls at Lancaster, a cottage-plan institution which later acquired an enviable reputation for reformatory methods. It was in this year also that the Ohio State Reform School was opened. From this time on the public appears to have grasped fully the idea that delinquent children should not be housed and cared for in combination with adults, but that on the contrary they should be placed by themselves and considered not as criminals but rather as prospective citizens needing careful training to combat their anti-social tendencies.

Probation Introduced in 1878—But it was not until 1878 that the practice of probation before commitment, and parole after it, came into vogue. In that interval of twenty-five years during which our juvenile reformatories went through the incubating process, we were constantly looking upon the delinquent child as a criminal, sentenced to serve a rigid term in prison, and salvable, if at all, only by the rigorous regimen of prison labor, prison silence, prison punishments.

In the face of such processes as the growing foster home plan of the Massachusetts State Board, it was inevitable that

the potentialities of the delinquent in a similar plan should be explored. It was natural that the practice should spring up, in spite of age-old court precedent, of placing first offenders in charge of a good friend of the court and of the offender, to see whether he could make a readjustment in society without having to go to prison. Once fairly under way, this plan of probation found its position of greatest effectiveness among the juvenile delinquents who must otherwise go to the reformatory.[1] But so long as the juvenile offender must be hailed into criminal court, tried with all the dramatics of a legal battle, convicted and sentenced, there continued to be too much process and too little opportunity to reach the child himself with early friendly help. He was bound to be treated as a criminal and a convict. There was needed some alleviation or alteration in our court procedure. This was found in the juvenile court.

The Juvenile Court—Illinois, by statute, created the Juvenile Court of Cook County (Chicago) in 1899. It was opened July 1 of that year. It was not to be a criminal court. It was not a court either of probate or of chancery. It was not like any court theretofore known to the common law; yet it was established by the most tenacious common-law jurisdiction among the United States. What then was the true nature of this "juvenile" court? Our question may be answered first by considering the nature of courts in general, and by inquiring into the functions of this court in particular.

A court, in legal language, is a tribunal of justice. In its earliest beginnings the court, as English-speaking peoples know it, was a gathering or assemblage in the courtyard of the baron or the king, of those who were qualified and whose duty it was so to appear. These qualified persons were the witan, the wise men, those versed in the customs of the countryside. When private war was supplanted by various forms of peaceful settlement between the parties, the chief of such forms became the "court." Instead of trial by battle or by ordeal, the practice grew up of submitting the evidence to the judgment of a wise man, or an assemblage of wise men. By this process it came about that the law—which is only the established customs of

[1] See Chapter XV *ante*.

the people—was sought out by wise men and by them applied to the issue in dispute.

Origin and Nature of Courts—These wise men became the judges—"sages of the law" as Coke would style them. Their purpose was the determination of the law and its application to the issue in dispute. They were always therefore tribunals of justice. They were never anything else. This is the basic concept of the court to this day; for while methods change with every new invention, justice is of simple heart and continues as of old without change. Each age, each century, almost each generation brings into being its new courts to reach new phases of social relations, but the long list of tribunals familiar in the law books are but changing aspects—but passing phases—of the one basic principle—a wise man of the tribe, seeking out the custom which is the law and applying its principles to the problem before him. In this light the juvenile court differs in no fundamental sense from a court of common pleas, a district court, a criminal court, a court of chancery or equity. They are all tribunals of justice and only that. So long therefore as the juvenile court is genuinely a court, we may say of it that it is concerned only with the application of the law to the facts.

Non-judicial Functions of the Juvenile Court—But this is only a secondary function of the modern juvenile court. It deals with alleged offenses—indeed would have no jurisdiction to entertain the case or to deal with the "defendant" afterward if it were not by virtue of the trial of an alleged offense against the law. But its chief object is not the establishment of the offense alleged: it is the constructive social case work task of doing something for the offender that he may adjust himself to his surroundings on a law-abiding basis. So much is the juvenile court a public welfare agency for administrative case work, and so little a court deciding issues of law, that it has become a lawyer's jest, with some claim to recognition, that "a juvenile court is like necessity in that it knows no law."

Nature of the Juvenile Court—The legal aspect of the juvenile court is not that of the criminal court. Rather it is that of Chancery—the Equity Court, exercising that funda-

mental guardianship of the state by virtue of which it is *parens patriæ*. The committee of the Chicago Bar Association, which was concerned in the preparation and passage of the Cook County Juvenile Court Law, expressed its purposes as follows:

"Its fundamental idea is that the state must step in and exercise guardianship over a child found under such adverse social or individual conditions as to develop crime.

". . . It proposes a plan whereby he may be treated not as a criminal or one legally charged with crime, but as a ward of the state, to receive practically the care, custody and discipline that are accorded to the neglected and dependent child, and which, as the act states, 'shall approximate as nearly as may be that which should be given by its parents.'"

Here then was a direct attack upon our established system of criminal justice, made at its most vulnerable point,—the point where the unyielding forms of the law came into contact with tender youth, the special object of public sympathy. Our women, our social workers, our ministers, even our lawyers, saw little children confined behind steel bars in jails and prisons. They saw youths of fourteen and sixteen put to death for murder. In the face of a dawning intelligence regarding the individual, his varying sense of responsibility, his tractability under constructive treatment: at a time when sympathy for fellowman was growing with newer world vision: such treatment of childhood became intolerable.

The Juvenile Court a Departure from Older Principles of Criminal Administration—These pioneers thought they were establishing a slight variation of our court procedure. In fact they were creating something new in criminal jurisprudence. Intending merely to remove the criminal taint from juvenile offenders and to protect them from prison contact, they were in fact staging no less than a revolution. They have taken the first far-reaching step in the socialization of the criminal law.

Throughout the long history of criminal trials, there has been a constant tendency to crystallize forms of indictment, of arrest, of motions, of trial, of sentence; faced always by a struggling populace, seeking treatment more consonant with

the social needs of the time. First, the stock practice of hanging the convict gives way to imprisonment. Then the prison limits are extended by parole. Then the individual is given some enlargement of his opportunity to reform through probation. Meantime the long, age-encrusted forms of common law pleadings and practice are simplified here and there by practice.

But criminal justice remains a crude instrument. The individual, charged with breach of the law, is tried not by an earnest, fair-minded search for justice, but rather by a legal battle of wits, in which the prosecuting officer is keen to show his ability and his eligibility to higher office; while defense counsel seeks publicity even if the case does not pay. Delay rather than speed is the order of the proceeding, since it is almost always to the advantage of one side or the other to drag the battle out. Somehow the defendant himself is a side issue. And when convicted he is disposed of by fixed statutory practice, individualized only in the slightest degree.

Such justice does not fit the needs of the time. The great urgency is for speedy trial and disposition that turns from mere punishment to the protection of society and the likelihood of rehabilitating the offender. As to the adult, we are thus far complacent: as to the child, we have risen in revolt. The result is the juvenile court.

Functions of Standard Juvenile Court—If we appraise this new instrument in terms of the court as that term has always been understood, we shall find that the name is a misnomer. The juvenile court is in effect a children's institute—a social case work agency in which the tribunal of justice to pass upon conduct is only an incidental. In the functions which a standard juvenile court is called upon to perform [2] is the exercise of exclusive jurisdiction over eight classes of persons or cases, namely, delinquents; dependents; neglects; adoptions; insane and mental defectives; school offenders; persons contributing to child delinquency; desertion and non-support of minor children, and bastardy.

Carving its jurisdiction thus out of probate, equity and

[2] See the highly authoritative report of The Children's Bureau Committee, 1923. Bureau Publication No. 121. *Juvenile Court Standards.*

criminal fields, this court is further required to deal with persons up to eighteen years of age. Marriage is not to oust jurisdiction, which once obtained shall continue until twenty-one unless sooner discharged or dismissed by the court. The judge is to have "legal training, acquaintance with social problems, and understanding of child psychology."

With his far-reaching jurisdiction must the presiding officer of this court cause to be made a thorough social investigation of every case, including a thorough physical and mental examination, a study of the child's behavior, his developmental history, his school career and his religious background, his family and home conditions. Out of this case study he must discover if possible the essential causal factors in his behavior and must reach at least a tentative recommendation for treatment. Psychiatric and psychological study must be carried out for each case where indicated by the case study, and for this purpose a clinic, presided over by a psychiatrist, a psychologist and one or more social investigators is requisite.

And in spite of all this inquiry, a hearing must be given each case within forty-eight hours of first apprehension and as soon as proper notice can be given to parents and others. No publicity; hearing private; no one present save those directly concerned in the case; witnesses not permitted in the "court room" except when testifying; as little formality at the hearing as possible, with avoidance of formal adherence to practices and rules of procedure usual in criminal court. Under no circumstances should a jury trial be allowed in children's cases, since "they are inconsistent with both the law and the theory upon which children's codes are founded."

The court must have facilities in direct control or in cooperation sufficient to provide supervision of the children in their own homes. Its jurisdiction should extend to the child wherever placed, even though it goes to a private social agency; and if home-finding agencies are not available, the court itself must carry out the administrative duty of placing its children in foster family homes.

One glance at this bill of particulars will show that this is no task for a trial justice. This is administrative social case work. Whether Johnny stole the apples appears to be unim-

portant, save to establish the jurisdiction of the court. If Johnny didn't take the fruit he may still be neglected or a destitute child, in which case he is well within the purview of such a court. The director of such a far-reaching operation must be a social worker of broad experience and of demonstrated skill. The court finds such a director in the person of his chief probation officer. This person, and not the judge, is the chief functionary of the juvenile court.

Probation Officer the Chief Functionary of the Juvenile Court System—The Federal Children's Bureau standards think of the probation officer as a college graduate or holder of a certificate from a professional school of social work; as a person of at least one year in case work under supervision; as "an individual of good personality and character, tact, resourcefulness and sympathy." Each such officer should handle not more than fifty active cases at any one time.

Obviously there is here set up a public institution for the discovery, correction, treatment and readjustment of children. In terms of our old definition this is not a court, nor anything like it. In terms of modern sociology it may be styled a court or an institute or anything we care to name it. In truth it marks the beginning of the end of the old-time criminal court. It is doing for the child exactly what ought to be done for the adult. The telltale indications of the new day in all criminal courts is indicated by our growing provisions for probation and parole; our psychiatric clinics to establish degrees of responsibility in fact; our constant classification of convicts in order to approach more complete justice in the interests of society. So intrenched are the sacred rights of the individual, so deep-seated is his fear of governmental tyranny, so unmistakable his constitutional guarantees of elaborate safeguards against false accusations and unjust punishments, that the woodenness of criminal trials for adults will continue for many decades, but social necessity is the driving force in modern procedure, and that necessity indicates a softening of the emphasis upon the offense and a far-reaching activity on the score of the offender's condition. The juvenile court is the beginning only.

Present Practice of the Juvenile Court—As a beginning, the process of our juvenile courts is crude enough. No-

where is the ideal reached. These standards are but the aims of the logical process as the best students of child care see it. Yet marked progress is being made. This new institution is an established fact in American public welfare procedure and is spreading all over the world. The day of the old-time criminal court for the trial of children has gone. Its departure for adults is imminent.

The great problem of the future in the upgrowth of the juvenile court will be not the acceptance of its principles by law-makers and the public, but rather the orientation of the scheme in the broader program of public welfare service. If we are to have extensive public welfare services lodged in state departments, exercising the functions of government in the care, custody and treatment of children, how are we to reconcile all this with the development of another full-fledged administrative department, built mostly upon a county unit, which finds all kinds of children needing public attention; establishes the nature and the degree of their need, and then proceeds to apply remedies?

The logic of the situation is that the juvenile court is not a court. It is a public child welfare department belonging to the executive branch of the government. Sound practice in the future must continue to recognize our courts for what they are fundamentally and should always remain—tribunals of justice; concerning themselves with the trial of issues of fact; finding the law and applying it to the facts as found. But sound practice must recognize also the fact that we can no longer limit the administration of criminal justice to a determination of whether the act as alleged was committed and the meting out of a statutory "punishment." We are obliged to take account of the offender himself. Try him, yes: but study his predicament in the light of the public welfare and then deal with him as such welfare may dictate, to the end that the greatest good may accrue to the greatest number. This only can be justice. If sound practice must take account of these two apparently conflicting principles, it means that there must be such a rebuilding, along the line of the present development of the juvenile court as will erect a governmental system of personal case work service with offenders in conjunction with the ad-

ministration of our criminal courts. This "executive-judicial" service calls for a rational system with the state government at the head, in charge of the planning and policy; and the county taking care of the local administration.

Juvenile courts as at present organized exist for the most part where there are numerous public and private administrative child-care agencies. With these it will soon come into conflict, to the extent at least of an unwise parallelism. The problem of the future will be to build the executive system to include the court instead of the present method of building the court to include the executive agency. One of the important signs of this growth outside and beyond the court is the psychiatric and the habit clinics. These are springing up in many places and are already serving children whom even the broad powers of the juvenile court cannot bring within its jurisdiction. The service is to all children showing social dangers. The system must be made comprehensive enough to include them all. The development of the future will include them all. In it the court will be but one feature.

TRUANTS—That we are still far from anything like a rational system is all too apparent. Children of tender age are daily sent to jail to await trial, and committed there after a finding of guilt in old-time criminal courts. Adoptions are daily decreed in our probate courts with practically no investigation and no trustworthy assurance that the child's welfare will be safeguarded. Children are still awarded after a decree of divorce to one of the parties or to both in alternation with no investigation touching the child's welfare. Truants in particular are still beyond the pale of sound individual treatment. In Massachusetts there still exist five truant or training schools conducted by counties. To these are committed truants and habitual school offenders between the ages of seven and fourteen. One institution is modeled on the cottage plan and undertakes to apply modern methods. The others are congregate establishments with no system of parole, no constructive system of training. These children are in all particulars like those eligible to Lyman School. For them truancy is not a delinquency: it is only the occasion for wrongdoing. These schools for criminal self-training rather than juvenile correction con-

tinue to exist at excessive cost, in the face of a commendable state system of child care, so great is the strength of local county interests in the councils of the government.

In subsidy states the private orphanages will no doubt delay for many years the upbuilding of a rational system of dealing with delinquents and other children. The tenacity of the reformatory and its tendency to fill up as long as empty beds can be found help to postpone the day when the state correctional institution shall take its place as only one unit in the entire program.

The great need is for such integration of already existing elements of a program of individual treatment of children as will establish a system of preventive social service. The child who carries a fatal defect of heredity or of disease, or of social tendency, should be discovered early, before his career of anti-social conduct begins, or his disease secures such a hold that it cannot be broken. Before tragedy comes wisdom; after tragedy, sympathy. We now apply the sympathy, but we continue to wait for the tragedy, even though we have full knowledge that it is likely to occur.[8]

## FOR THE STIMULATION OF THOUGHT

1. Do you agree with the text in the assertion that the Juvenile Court is primarily a public social welfare agency dealing with child care? An industrial accidents board has jurisdiction to try issues regarding accident claims. It receives the complaint or claim of the injured workman, hears his evidence, and the evidence of the employer. It makes its award. Its business is the doing of justice under the statute. Is it a court? Is it of the same nature as the Juvenile Court?

2. Should the jurisdiction of the Juvenile Court be extended to all domestic relations; so that the individuals in the delinquent's family, or involved in his problem, may be brought in and controlled?

[8] The best examples of the workings of the juvenile courts in the United States are perhaps those of Judge Ben B. Lindsey of Denver and Judge Charles W. Hoffman of Cincinnati in his Hamilton County Court of Domestic Relations. The first, a colorful personality, has done more to popularize the work of the juvenile court than any other figure in the brief history of the movement. Judge Hoffman has done a significant piece of work in putting special emphasis upon records and study, and in relating all his juvenile problems to methods of family adjustment.

3. Do you see in the Juvenile Court the entering wedge for the socialization of all our courts of criminal justice? Are we approaching the individualization of treatment in all criminal administration? What are the more important obstacles to such an outcome?

4. If the Juvenile Court is such a duplication of the public child care agency as the text suggests, which must in the end give way? Why?

## FOR FURTHER READING

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## CHAPTER XXV

## THE PUBLIC HEALTH

Thus far, in the manifestations of public welfare service, we have dealt for the most part with the care, custody and treatment of persons; with systems of ordering the relationship between the community and the individual who, for whatever reason, has ceased to be an automatic going concern. Where he has been indigent and unable to do for himself we have placed him in poorhouses. The insane we first placed in the poorhouse and later in establishments specially designed for their care. The feeble-minded we have experimented with as underprivileged normals, only to find them permanently defective; wherefore we have set about teaching them as much as their limited capacities will permit. The offender we have withdrawn, for the most part, from the death house to serve an ameliorated sentence subject to a variety of expedients designed for his reformation. The juvenile, under the tremendous urge of sympathy and a trace of reason, has found his way into special institutions, and even to an enlargement of his prison bounds on parole.

The Public Health Process is Educational and Preventive—In this present chapter we approach nearer to preventive processes in public welfare service than in any other phase of our study. Though the need of public health service is evidenced by a tragic procession of the sick and dying; of causal infections; crippling onsets; resulting insanities, impotencies and declines—it is in this phase of the service that preventive measures are most necessary and their need most apparent.

In earlier times in America, when population was sparse and communication less frequent, the danger of infection was much less. The people lived on the land or in small villages. The farmer raised his own milk supply and had the exclusive use of it. Only he and his family used the water from the family

well. A large part of his food was grown on the farm and prepared by him or his household. His children went to a school attended by ten, twenty, maybe forty children. He and his wife did sometimes "go to town" Saturday night or to a meeting of neighbors at infrequent intervals. Opportunities for epidemic diseases were comparatively few.

With the coming of great cities these conditions have been reversed. The water supply comes from a single source, through a metropolitan system. The supply will be as pure, as tainted, as dangerous for one citizen as for another. And if by chance it is contaminated with typhoid bacilli, the original danger to the owner of the well is multiplied by the number who use that water, that is to say, to every human being in the metropolitan area. The same conditions obtain in the milk supply. One typhoid carrier in a dairy three hundred miles from a city served by a milk company which mingles the milk brought in from dairies in that large radius, renders every drop of milk probably dangerous, while the supply is so monopolized as to render the citizen almost as defenseless as he is in the case of water.

Disease might attack the lone cottager and destroy his whole family, but seldom did it travel far because the contacts of the family were few. To-day that family lives in a third-floor-back. The ailing member goes to his work as long as he can stand up to it; since hunger will follow loss of wages. He eats his lunch at a cafeteria or is served by a waitress who serves many others in the course of the same meal. If he has an infectious malady his opportunities for spreading it are multiplied a thousandfold in his urban setting.

To save his life, man can no longer neglect the dangers of infectious diseases. The health of the individual has become the vital concern of the whole people, not that they may do for the individual that which he cannot or will not do for himself, but rather that they may protect themselves from his dangerous condition. As might be expected, the history of the public health movement begins with the obvious. Its first stage may be called that of fundamental sanitation. Communities undertook the municipal disposal of waste, so that the filth of every household should not lie about. The first attempts did little

more than open gutters for the passage of swill. Later we put the system underground, and latterly have accomplished very elaborate waste-disposal systems. The supply of pure water has been a problem for ages, wherever population-swarms have had to depend upon some single supply. The tourist, gazing at the Roman aqueducts, finds it hard to realize that they date back nearly a thousand years before the Christian era. Such elementary sanitary measures are the accomplishment of city life and are probably as old. This first stage of public health philosophy is distinctly the age of the engineer.

Bacteriology—The second stage is that of the bacteriologist. It is not more than fifty years old. With the discoveries of Pasteur and his followers in the field of bacteriology, the processes of isolation and disinfection became established measures to check the spread of diseases. Such a classification is but an approximation to indicate the period during which scientific understanding resulted in purposeful action. Man appreciated the value of isolating sick persons a long time ago. In the Middle Ages the wretched leper must carry his clackdish or his bell to notify all persons of his approach. He must shout "unclean" to warn those unaware or forgetful. He must live by himself in hovels and enjoy religious services from "the porch" only, looking through a small opening in the wall. It was known that his disease could be transmitted, and as the scientific reason was unknown, man fell back upon demonology for his explanation. The sick had a devil, or were guilty of error of some sort. The summer tourist will see on a small island in Boston Harbor a number of dingy grave markers, all overthrown, but still telling in rudely chiseled phrase the record of lepers, smallpox victims and other dangerously diseased persons who came to America early in the seventeenth century but never got farther than *Ye Castle,* which was quarantine station in those early days.

It was common in colonial times to burn the house in which contagious disease patients had died; but the reason then given was to discourage the devil rather than to consume the known germ of the disease. We may therefore date the era of isolation and disinfection from Pasteur and Koch and call it the age of bacteriology.

Personal Hygiene—To these two phases we have now added a third, the era of personal hygiene. In order to combat tuberculosis, syphilis, gonorrhea, and other destructive diseases, little progress can be made through public sanitation unless the individual will look after his personal condition. He must therefore be taught health habits. He must be informed of the symptoms of disease. He must learn the line of safest conduct. He must be able to detect the course that involves danger. In the last analysis, upon this third phase—personal hygiene—rests the success of preventive public health service.

With our present progress in a philosophy of public health protection there is ample ground for dissatisfaction. It is fragmentary; pestered by ancient hypotheses; impaired by superstitions; well-nigh strangled by selfishness and a brood of malices. Nevertheless when we consider that of the life history of man, known by indisputable evidence to go back at least fifty thousand years, during which he has lived in colonies, this scientific insight into the nature of disease and the truly modern public health doctrine based upon it has obtained for less than half a century, we may readily agree that it is too early to complain that our public health system is not perfect.

It is the purpose in this chapter to trace the thread of growth in health protective measures in public welfare with emphasis upon the scheme of organization which appears to be best suited to the modern social order.

"Public health," says Professor Winslow of Yale, "is the science and art of preventing disease, prolonging life, and promoting health and efficiency through organized community efforts for sanitation, the control of infection, the education of the individual in the principles of personal hygiene, the organization of the medical and nursing service for the early diagnosis and preventive treatment of disease, and the development of social machinery which will insure to every individual in the community a standard of living adequate for the maintenance of health." [1]

Beliefs and Superstitions—The present-day sequelæ of our ages of ignorance take the form of innumerable beliefs and superstitions. They are the foundation for the predatory

[1] "The Untilled Fields of Public Health," *Science*, Jan. 9, 1920.

activity of quacks and nostrum vendors; of cult savants and various penetrators of the future. Existing authentic reports of fraud operations in this field of health reveal such an appalling degree of gullibility as to overshadow even the perfidy of the operators. Thus the originator of a "physical culture bed," like any other bed only more beautiful and possessed of the magic power to remedy asthma, intestinal stasis, floating kidney, the falling of any internal organs, poor circulation, etc., does not lack for customers. It may be claimed with truth that a bed is one of the component parts of almost all present methods of treating sickness. As for the rest it is the case of a fool and his money.

The "Pandiculator" introduces the enticing theory that stretching the body is a cure for many ills. It increases the height—a truthful claim, assuming that the stretching does in fact take place. But it is also offered as a help in the treatment of rheumatism, catarrh, obesity, constipation and cramps. It is somewhat costly; but then! It is conceivable that enough sweating exercise experienced in getting a "pandiculator" to pandiculate might benefit such a patient, but as for the rest the only ailment so far reported for which stretching the body is a sure remedy is horse stealing!

Many thousands of ailing folk appear to have listened to the brand new idea that the components of the human body have vibratory motion, and each of them its own peculiar vibratory rate. When these are in proper adjustment the body is healthy; when out of adjustment it is sick. Considering the tremendous part motion plays in the constitution of the universe, this notion is a real triumph of quackery. Now since the body is sick and since this sickness is due to maladjustment of the several rates of vibration, what more natural solution than that the "occilloclast" (a secret invention) should bring them back into adjustment? It could be had for an initial payment of $200 to $300 and a monthly rental. But it must not be opened. No one must look inside. The lease stipulated that the lessee should not look inside his box! It is claimed that the public has parted with large sums to satisfy this theory. Yet compared with the individual who would bite on such a magician's

contraption for the reharmonizing rates of vibrations unknown to medical science, "Nigger Jim" is the prize doubter!

Of equal restorative quality with the "occilloclast" is the "oxypathor." It should mean much to those who are willing to believe anything. It is well known that magnetism pervades the world of matter. It must be in the body. Well, then! the oxypathor is a brass cylinder filled with sand, clay, charcoal, and similar materials, with nodes or treating plates and electrical connections. It is advertised as a "thermo-diamagnetic" instrument, which if attached to the human body alters its magnetic properties, increases its affinity for oxygen and adds to its capacity to absorb oxygen from the air. According to the claim it would quiet pain, cure appendicitis and practically all diseases. More than forty-five thousand of these oxypathors at $25 to $35 apiece were sold between 1909 and 1915 when a fraud order was issued by the United States Post Office and the chief exploiter sent to a federal prison.

The list of these frauds is legion. In the patent medicine field there is no doubt more money spent for quack nostrums than the grand total of legitimate doctors' fees, genuine medicine and the entire tax levy for public health activities. It is natural enough that a people lately convinced that the earth was flat, and still largely of that belief, should harbor unscientific theories about problems that cause them great fear. People who deny the germ theory of disease because they themselves have never seen the germ are good soil for the vibratory theory of physical inharmonics. They are not particularly good soil for the propagation of a community consciousness in problems of public health and sanitation. The constant agitation against vivisection, by an army of sympathetics who have never seen such an operation and understand neither its methods nor its purposes, shows how averse to reason the average citizen is in a day which calls more and more for the reasoning individual. The heavy political pressure constantly brought against vaccination in the public schools and the dogged opposition to diphtheria immunization indicate again the relatively high number of self-conscious and community blind persons in the make-up of modern society. These persons and their reactions

represent the sequelæ from the ignorant, superstitious past. They are the demonologists of to-day. They and not disease as such represent the real obstacle in the way of a thorough-going public health service.

Public measures to defend and promote the public health in the United States had their first beginnings in crude efforts at sanitation. The process as a whole has passed through two distinct phases and has now entered a third. At the outset governmental efforts were concerned exclusively with environment. The causes and the sources of disease were to be found only in the surroundings under which men lived. Malaria, for instance, arose like a vapor from swamps and stagnant backwaters. It was not thought to be communicable. You caught it from your ill-smelling and unsanitary surroundings. An abandoned house was a dangerous place to enter lest by chance some luckless individual had died there—and the death might have occurred half a century before. The uncollected garbage, the dead rat in the gutter, the manure on the pavement were the fetid conditions which sent up a stench in the hot summer sun of the slum quarters, producing fevers and smallpox. There could be typhoid in a rotten potato; yellow fever in impure water. The picture was one of noxious vapors arising from every disgusting and evil-smelling object, seeping and soaking into the bodies of the unwary to fill them with deadly infections. The worse a thing smelled the more dangerous it was. To combat such conditions it was necessary to reconstruct the environment and to re-order the lives of the populace to conform to rigid and voluminous sanitary laws. We may still read in Parke, an authority on public health measures, that Cairo in Egypt banished yellow fever by the expedient of improving the ventilation of the city.[2]

The Bacterial Nature of Disease—All this was consonant with the beliefs of the time. The germ origin of disease had not yet been demonstrated. Later, when Pasteur and Koch and Jenner had proved their thesis, we, the general public, did little more than people our pestilential vapors with a myriad of malevolent organisms. Millions, billions, of these germs lurked in every moldy corner like huge spiders, ready to

[2] See *Hygiene*, by Parke, 8th ed., 1891.

spring out upon the unwary, stinging him with deadly humors. Our notion of a germ was that of a bug, too small to see, an organism designed expressly as the enemy of man. And because germs were harmful, our popular notion was that all germs were harmful. They peopled our environment in multitudes like the sands of the sea.

Though this first phase of public health philosophy was hypothecated upon ignorance, the more profound since real understanding lay so near, its content of sanitation, the perfecting of water supplies, the cleaning of streets, the better ventilating of buildings and areaways, was far from ridiculous. Indeed it contains much that is essential to execution of that better understanding which ushered in the second chapter in public health reasoning. This better understanding arose out of discoveries in bacteriology.

To repeat then, the first stage was that of sanitation, the era of the sanitary engineer. He dealt exclusively with environment. The second stage was that of hygiene, the era of the bacteriologist. He turned his efforts away from environment in the main, and in the direction almost wholly of the individual himself. A pestilential vapor, as such, became of little importance. The ordinary "stink bomb" used by the practical joker is free from the dangers of germ disease, yet its fetid odor renders life unbearable for the time. The workers in the beam house of a tannery, though sometimes exposed to anthrax, are in the main a healthy group since they work hard, in moist air, not intensively heated, and handle reasonably clean materials. But! It smells to Heaven!

Bacteria, the Source of Human Disease—This new science of public health recognized a handful of the myriad known bacteria as sources of human disease. It began to study them in their relationship to the human body and its environment. It saw them carried by impure water supplies, by milk, by insects, and it made the discovery that the routes of infection in human beings are simply the routes of infected body discharges. And these, of course, are only the routes of ordinary uninfected body discharges. The germ of disease travels from host to host. It does not live in some Bluebeard's castle, up a beanstalk somewhere in the limbo of our "environment."

The epoch of sanitation failed to provide a complete solution to the public health problem because it sought the sources of disease everywhere but the place where they would be certainly found,—in the individual himself. The epoch of hygiene came nearer to the truth by pursuing the germs of disease to their lair and seeking to defeat their growth. By the old philosophy the dead rat was a disease breeder because it decayed and created a stench. It was "unsanitary." By the newer thought it was harmless as a source of carbon dioxide but highly dangerous as the host in which flies could breed and become carriers of disease from one person to another. The "malarial" swamp was not a danger because it was damp, full of water forms and succulent plant growth, with decaying vegetation and swamp gas. It was a danger because in its stagnant waters the larvæ of the Anopheles mosquito find their medium of development, producing swarms of insects, each one of which may be a carrier of the malaria germ from one human being to another. A municipal milk supply may not be chemically clean, but it is dangerous only when it becomes the medium of transmission of the germs of typhoid, scarlet fever and other diseases from the cow or the individual to still other hosts in which it can grow. Dirty alleys and damp cellars are nothing to the bacteriologist, save only as they may enter into the transmission of infected discharges.

Sanitation is still important in the second stage of the science of public health. But it confines itself principally to the search for the infected individual; the route or routes from which that infection spreads from the infected individual; and in general the routes of spread by which the excreta of individuals uninfected as well as infected travel from one individual into their companions, neighbors and associates in ordinary daily life. The aim of the new hygiene is to spot the infected person, discover the way in which his body discharges are being transmitted to other persons, and stop it.

Obviously environment is still vitally important, though not for the old-time reasons. Unscreened privies in the south, and the habit of leaving human excreta exposed in paths and other places where individuals are in the habit of walking barefoot, are the chief spread routes of hookworm. Careless sewage

disposal in summer camp is responsible for water contamination which brings an inevitable outbreak of typhoid in American cities a few weeks after the close of the vacation season each year. Spilled and neglected garbage and a few gutter sewers in "dog town," "wop town," "east side," and north end alleys are the breeding ground for flies which feed on excreta and then swarm about the mouths of milk bottles, nursing bottles and the lips of babies in the hot slums, transmitting bacilli from person to person.

Transmission of Bacilli—By this process of slowly accruing wisdom, man has discovered that wretched surroundings do not necessarily mean a predisposition to disease infection. The theory of the upbuilding of immunities through vigorous general health has nothing like the effect it was formerly thought to have. The question in bacterial diseases is whether the bacilli have been transmitted. If the infection is pronounced enough, or, if weak, nevertheless repeated often enough, the culture will grow in the human system. There appears to be little choice between the rapidity with which the influenza bacillus will develop in the ill-conditioned bodies of a miserable tenement population and its rate of progress among picked, well-exercised, well-fed soldiers. The infection is the fatal circumstance. Without the resistance built up by some specific toxin, such infection may be expected to manifest itself rapidly in the disease. With this knowledge, the present age of personal hygiene is seeking to meet each specific infection with a specific immunization. Like the forest ranger who sets up a back fire to head off a conflagration, the public health general seeks always for vaccines, toxins and other specifics with which to render the individual a poor and inhospitable host to the invading germs. Meantime he is struggling to cut the enemy's line of march from victim to victim, so that infection may not take place at all.

Obviously, this far-reaching campaign calls for the loyal and active coöperation of the individual who is the subject of it. Public health activity by government includes many administrative functions touching sanitation; the supervision of water supplies; oversight of the taking of shell fish; regulating quarantine and other measures of safety. But with all its activity,

the gist of the work of a modern department of public health is education. Unless it reaches the individual with information and specific instruction upon which the citizen may build a hygienic course of conduct, it is futile to set up community barriers to disease. There can be no effective general sanitation that is not based upon personal sanitation arising out of intelligent care and foresight on the part of the individual.

How have American communities, acting through government, met the need for public health protection? Whatever their course has been, these two circumstances hold true; first, that the crude, obvious, emergent thing has been done as a starting point; and second, the individual singly or in organized group has blazed the way before government, by force, or conviction or persuasion, has taken over the operation and made it an official function.

The First Health Boards—Ever since we have had villages, there has been some authority therein to enforce rules of sanitation and in particular to regulate the coming and going of persons ill with "dangerous" diseases. Among English-speaking peoples there is at least one governmental health authority for every principal unit of government. In examining them we shall have to distinguish between those concerned merely with the provision of care and treatment for the sick, the insane and the defective. We are concerned primarily with that branch of government which exercises the police power of the community to set its health house in order and protect itself against the ravages of disease.

Always our greatest fear has been disease. Consequently in times of epidemic we have been always willing to yield to despotic power lodged in a court or an officer of the government. But the idea of a board or official body of citizens created by statute for the purpose of enforcing health laws is new.

The Massachusetts State Board, 1869—In 1849 cholera appeared at the port of Boston. In that year the Massachusetts Legislature authorized a commission to study the public health situation and make recommendations. In the resulting report, a state board of health as a supervisory body and local boards of health as administrators of laws and regulations,

were proposed. This report called for a census of the population; for systematic registration of births, marriages and deaths; for investigation of the causes of disease; and for several measures of sanitary control and quarantine. The reasoning by which this commission reached its conclusions is well embodied in the following paragraph:

"We believe that the conditions of perfect health, either public or personal, are seldom or never attained, though attainable; that the average length of human life may be very much extended and its physical power greatly augmented; that in every year, within this Commonwealth, thousands of lives are lost which might have been saved; that tens of thousands of cases of sickness occur which might have been prevented; that a vast amount of unnecessarily impaired health and physical debility exists among those not actually confined by sickness; that these preventable evils require an enormous expenditure and loss of money, and impose upon the people unnumbered and immeasurable calamities, pecuniary, social, physical, mental and moral, which might be avoided; that means exist within our reach for their mitigation or removal; and that measures for prevention will effect infinitely more than remedies for the cure of disease."

This prognosis was written before Pasteur opened up a new scientific world, destined to revolutionize our attitude toward disease. Yet it shows that rational basis which has lain at the bottom of the Massachusetts plan throughout and has become the doctrine of public health planning elsewhere. This report was disregarded by the Massachusetts Legislature, the threat of cholera having disappeared. In 1869, however, that state set up the first state board of public health in the United States. Its principal duties were to investigate unsanitary conditions and to report the results. In the language of the enabling act, "The Board shall take cognizance of the interests of the life and health of the citizens of the Commonwealth. They shall make sanitary investigations and inquiries in respect to the causes of disease, and especially of epidemics and the sources of mortality, and the effects of localities, employments, conditions and circumstances upon the public health; and they shall gather such information in respect to those matters as it may

deem proper for diffusion among the people. It shall advise the government in regard to the location and other sanitary conditions of any public institutions, and shall report to the Legislature each year with such suggestions as to legislative acts as they may deem necessary."

Its Duties Supervisory in Nature—This general, roving commission, supervisory in nature if anything—certainly devoid of administrative powers—did nevertheless create leadership in public health thinking, which was perhaps the greatest need of the times. In 1886, after six years' submergence of this board with the Board of Lunacy and Charity, the State Board of Health was again reëstablished as an independent body. It was to take cognizance of the following matters:

1. The causes and prevention of infectious diseases.
2. The suppression of nuisances, including the regulation of offensive and noxious trades.
3. The collection and diffusion of information relative to industrial hygiene, or the effects of different occupations, industries and domestic pursuits upon people at various ages and under various conditions of life.
4. The hygiene of schools, school buildings and public institutions.
5. The examination and investigation of public water supplies and public ice supplies, and the prevention of their pollution.
6. The investigation of drainage and sewerage systems or plans, so far as they relate to the public health.
7. The disposal and transportation of the dead.
8. The inspection of food, drugs and other articles affecting the public health.
9. Inquiries into the causes and means of prevention of insanity.
10. Inquiries into the amount of intemperance from the use of stimulants and narcotics, and the remedies therefor.
11. The protection of human life.
12. Investigation as to the infectious diseases of animals, so far as they affect the public health, e.g., hydrophobia, trichinosis, glanders, anthrax, etc.

Here again, the State Board was given no power to direct the conduct or circumscribe the liberties of the individual. In

so far as that was done, it was effected by local police and health officers. The state body did nothing but study and report.

Other states slowly followed the Massachusetts lead, adopting her plan of organization and gentleness of powers. The Michigan and Illinois boards set up in 1877 were practically replicas of the eastern original. The New York Board, created in 1880, was soon given some real powers of supervision over local boards. In 1885 it was empowered to require the development of local boards.

State Boards—The history of all these early boards has been the inauguration, by slow stages, of a philosophy of the public health, as distinguished from public comfort in times of security and defense in epidemic. They mark the beginning of that age of the bacteriologist, when the sanitarian gave way on the center of the stage and the new theory of disease causation and communication was making headway in the consciousness of the people. Their activities had to contend with native selfishness; with instinctive distrust of governmental direction in every quarter save military defense and the preservation of the peace. They had in particular to face a firmly intrenched set of superstitions and beliefs about disease, and a confirmed practice of identifying disease with bad smells and unsightly surroundings. In bending the emphasis from environment to the individual, from sanitation purely to more rational sanitation and personal hygiene, they were pioneering in the field of special education.

For this purpose they were well organized as loose boards of unpaid citizens; since they were as free as practicable from harmful political influences and stood in some sort as representatives of public opinion. At a later time, when the pioneering was advancing to the stage of state action, to execution of many service functions, we find the control boards receding to an advisory capacity in the background, and the leadership taken by a paid commissioner or other executive.

It is not necessary for purposes of this treatise to discuss our American boards of health, state and local, in detail. It is enough if we shall discover the conditions which brought them into being; the service which they render to Society; and the

future of public health conservation and promotion so far as they have helped to shape it.

Federal Public Health Service—The Federal public health service grew up early because of a constant danger to which the states were exposed—the danger of epidemic and infectious diseases imported from foreign lands. The states individually were ill equipped to deal with this problem. The Federal government had power to deal with commerce, and in general with interstate relations, and relations and contacts with foreign lands. In 1798 Congress set up a Marine Hospital Service to care for sick and disabled seamen. Numerous duties of health protection in our ports and touching interstate commerce were dumped upon this governmental body from time to time until, in the late '70's, the old title was dropped and the service was given the more accurate name of the "Public Health Service."

Its greatest contribution, however, is not Federal regulation of conditions touching commerce. It lies in the original investigation as to the nature and causes of disease. Smallpox, yellow fever, Rocky Mountain fever, pellagra, cholera, leprosy, bubonic plague, hookworm, and many other maladies have, largely as the direct result of our public health service studies, been identified, oriented among the enemies of man and made vulnerable to scientific attack. Some of them have been banished through this same research service.

Yet the Federal public health service, like our state boards, has little if any power to order the individual about, or in any manner curtail his personal liberties. It may be stated as a general principle that the administration of the police power, so far as it touches the individual citizen, is a local function, while general supervisory oversight, the construction of the broad program for the community, tends to become lodged in the largest unit of government. Within the past decade, with the incoming of the third distinct phase of public health reasoning—the stage of personal hygiene—there is a marked tendency to head up our problems of public health in the national government. An example is the development of prenatal instruction and education in maternal and infant hygiene. The states resent it. It has to be offered like a sugar-coated pill, in the nature of a

subsidy to be matched from state funds for local work: but by slow stages it is advancing the certain knowledge that however local and intimate the problem of restraining the individual may be, the philosophy of the public health is as broad as the nation. The public health is a national problem. With the practical elimination of all geographical or other physical barriers in our human relationships, this must be so.

The present organization of our national government is still defective in that it fails to place emphasis upon the most vital interests of the people. It deals with their property, and their political and economic relations with each other and with foreign nations. Their education is rated no business of the national government. Their health has been considered—is still thought of—as their personal business. Only in the matter of infectious diseases have governments felt warranted in controlling the individual. Due to this point of view, we have departments of state, of the interior, of agriculture, of labor, but none of the vital physical welfare of him who labors.

Expansion of the Federal Service—In the course of progress in health wisdom it was natural that this should be so. But now that bacteriology has illuminated the page of bodily well-being, we may expect a change of alignment in the machinery of government by which the true interests of our citizenship are sought to be served. As the laws under which we live have become transformed from a superstructure founded on contract and the theory of possession to a system ordering social relations and finding its urge for growth in social necessities; just so has the personal independence of the citizen become circumscribed step by step as his potentialities for harm to his neighbor have become apparent. He could carry syphilis about with him, infect other persons with it, beget children with no safeguard against it—he still does these things out of his God-given right to come and go without let or hindrance. But the thongs of his restraint are already prepared. Social necessity forbids so much license. It is too damaging to others. For so little personal liberty it entails too much community damage. Hence the time must come soon in the natural course of things when the syphilitic must keep his misery to himself just as the victims of leprosy and

smallpox have long been required to do. This gradual change in point of view means change also in our governmental machinery. In the national government it means that the most important department in the executive branch of the government, save only perhaps the vital Department of State, will be in these years to come the Department of Public Health. Its secretary must in time be the leading philosopher of national progress. This great department of the future will build on the able beginnings of our present Public Health Service. Its duties must deal with the upbuilding of an adequate program of public health. It will seek the thorough registration of vital data. It must outline and encourage the development of educational and administrative processes calculated to discover health dangers and to combat them. It must lead all state and smaller jurisdictions in the theory and practice of as complete a program of conservation and promotion of public health as the existing knowledge of the time makes practicable.

State departments are the secondaries under such a national leadership. Supreme in their several territories they will coordinate their program building with each other under the Federal plan. Their method or scheme of organization need not change from that best type in which a single commissioner administers the functions imposed upon him by statute, but is subject to an official advisory group in planning and policy.

Under such state departments the county and municipal bodies will administer the rules and regulations and processes indicated in the state program. There will be no room for independent small town action in matters of interpretation, as for instance, the determination of what diseases are to be considered infectious, the standards of quarantine, the privilege of allowing favored physicians to omit reports on tuberculosis, venereal and other reportable diseases. The standards will be set after careful study and long deliberation, and the local officer will execute them. The vital nature of every rule being better appreciated by the people than in these nebulous days of the present, compliance will be less of a burden.

What then is the content of this program of the future and what are the channels for its application?

The modern program of public health is built up through

three principal operations, namely, the assembly and organization of existing knowledge; research into the nature, the causes and the means of combating disease; and survey and investigation of conditions of human life to determine the social and economic conditions to which knowledge already gained, as well as the conclusions from such research, must apply.

Building upon the past, this program or plan of action for Society to carry out recognizes the need of treating the environment in which human beings live, not as in former times by combating bad smells and stagnant waters as such, but by detecting in those surroundings the opportunities for the transmission of disease germs from person to person. Sanitation therefore becomes specific where it used to be general. Using the new science of bacteriology, the new plan seeks always the identification of each disease and its causes and undertakes to discover specific toxins and antitoxins with which to combat it. As a result, general fumigations find themselves limited to precautions against carriers and other means for the transmission of bacteria. With only the most limited qualification upon the assertion, the germs of disease live in the individual, not outside of him. Having traced the disease-producing bacteria to the body of the individual, and ascertained their extreme limitations when excreted, the new public health reasons that personal hygiene is the only course which will provide adequate protection to the public health.

Elements of the Modern Program—If this is the nature of the public health program of the future, how shall it be applied? That is to say, what are the functions which the modern board of health should exercise? And what processes by other bodies and by individuals should it encourage?

1. *The first and constant duty of this program is the education of every individual in its jurisdiction in personal hygiene. Some of this process may be carried out directly by boards of health; some of it by hospitals and health agencies; but principally by the elementary public school. The one certain point of contact between the public and the child is the school. All normal children are required to attend. About one-tenth of all the children who enter the public schools remain to attend the high school. The grades therefore are the place where all*

*the children are to be found. Furthermore, as health education lies chiefly in the inculcating of health habits, and the best time for the making of habit impressions is early in life, the altogether hopeful period is childhood, and the place is the elementary school. Health education is destined to be the foundation of the curriculum of the future. Obviously, teaching health in the schools must begin with the teacher herself. It should be a part of normal school and college curricula.*

2. *Its second function is the supervision of every individual in the community to detect defects, disabilities and diseases. Medical practitioners, hospitals, dispensaries, carry this work forward, but the effective place is again the public school. Here the individual is young, at the time of life when preventive measures may save him from crippling disabilities or early death. Here is the place for the thorough and systematic medical examination of the individual. A moderate amount of medical inspection is already undertaken through physicians and school nurses, but the broad field is hardly touched and the work is indifferently done. Nowhere is the discovery followed up to ensure preventive or curative treatment.*

3. *The program must require the treatment of every individual for all ailments thus discovered. Thus far, the personal liberties of the individual and his instinctive shrinking from health reckonings lead to the neglect of treatment even though specifically indicated and known to be urgent.*

4. *The supervision, with more or less rigid restraint, of all persons suffering from infectious diseases. In this field we have already accomplished much. It is the only branch of the program where any consistent application has been made.*

With our present ignorance of what constitutes sound personal hygiene, this seems like an ambitious program. With existing ignorance, prevailing superstitions, opposing theologies, and selfish indifference, such a plan of protection and promotion of the public health is far in the future. It is, however, the sound goal indicated by present knowledge. The world moves fast to-day because of cumulative scientific discovery and invention. The ways of life are constantly changing. Personal habit and conduct and even communal life show the incoming of every major advance in knowledge. The

ignorant past recedes at a fast pace, and paradoxically yesterday must be rated a part of that past with its stupid obscurities. In the light of this new knowledge of himself and his environment must man live, and so living he must protect himself from disability, from defect and from disease that the generations as they succeed each other may show a finer physique, a superior intellect and a happier existence.

## FOR THE STIMULATION OF THOUGHT

1. Is the argument against State medicine the outcry of physicians who think they have a vested interest thereby endangered; or has it substance grounded in sound public welfare policy? What is the reasoning *pro* and *con?*

2. Should government, under any circumstances, undertake medical treatment of persons other than those dependent upon the public for support? Why?

3. Should there be a Federal Department of Health with the same rating as the Department of Agriculture, the Interior, State and War? Why? Would it impair the doctrine of States' rights?

4. Mill says that "the only purpose for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others." Apply this dictum to the case of (a) the infectious syphilitic who has committed no offense against the law; to (b) the victim of tuberculosis in an advanced stage, who spits on the floor of his own house and remains in contact with his children; to (c) the patient in a hospital diagnosed as yellow fever; to (d) the citizen otherwise in good health but shown to a State department of health to be a carrier of typhoid. How far should government interfere with the liberty of the individual on the ground that he constitutes a source of danger to the public health?

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## CHAPTER XXVI

## SUMMARY AND CONCLUSION

This exploration into the present content of what we have hopefully called a science of public welfare began with grave questioning of the human cosmos and its final aim. Is human Society inconsistent with the laws of nature and therefore ephemeral? Man, the chronic optimist, refuses to believe it though the evidence is disturbing. Does increase in population beyond the resources of the land mean war, famine and reduction in numbers below the line of land competence; or else the disintegration of the social order? Man interprets all phenomena of the universe in terms of himself, picturing even his gods in his own likeness. He is an incurable egotist. His faith is boundless in his ability to find ways of increasing the resources of his universe to meet all possible needs of an increasing population-swarm. Therefore he will think not of the morrow.

However unreasonable, therefore, we discover the human order to be, our inquiry finds it to be substantial and purposeful. If we think of the millennium and say it is vain, we must still look at the centuries and say they are good. We are forced to leave that ugly query for an analysis of public welfare problems, only to return in the end to the same fundamental consideration. We close as we began, for the riddle of Society is like the riddle of the sun. Like elements in physics, the tenets of man's ethical structure of Society are the major factors in his universe, not further soluble. We accept them as facts.

Government and Public Welfare Redefined—Government we find is that association of all the persons in the community through which they serve their general good by keeping the peace, by maintaining the common defense, and by carrying out the general will in the promotion of public welfare.

As to the public welfare itself, our conclusion is that we

should take it to mean "that objective in social service which affords to the individual the highest degree of freedom of thought and action commensurate with the like privileges in his fellows; which holds out to him an equal opportunity to secure for himself and his dependents the advantages of place, property and power conducive to his happiness, his contentment and the necessities of his existence; and yet which affords to Society collectively the continuing opportunity to live at peace, functioning as the fountain of authority from which flow the means for attaining this welfare ideal." It is well that we repeat these definitions: they must not be lost sight of.

But if we are to understand the inwardness of present public welfare enterprises and their tendencies, we must examine their origin. What is the background of public welfare service in the United States? To this end our search has led us into the public and private charities of old England; into the law of charitable trusts and franchises—another way of stating the relation between government and the individual with reference to welfare obligations; and into the relationship between governmental and voluntary undertakings in public welfare. As a still deeper quest for the beginnings of welfare service we have examined the causes of those changes in social relations which go on about us constantly. We have noted the echo of these changes in social relations in our concept in law and government. Finally, we have indicated that remarkable advance in man's knowledge of himself which has brought about a new conception of the individual. We have almost rediscovered him.

In this somewhat extended search into the background of the public welfare service of to-day, we find that our system of public poor relief is a copy of methods used in old England, established there through centuries of experimentation under the leadership of the church. In the final assumption of poor relief by the government, the suppression of vagrancy was perhaps the greatest single cause. It was in the forty-third year of the great queen, Elizabeth, that the English system of public relief was crystallized into the form in which it has stood substantially to the present day.

Public Welfare and Scientific Discovery and Inven-

TION—Approaching our topic from another angle, we observe that human relations are an adjustment of the individual to his environment, and that this environment is fixed, altered and controlled by the extent of man's knowledge of the forces of nature. When the making of goods for market was all a process of handcraft, yarn was spun on the spinning wheel: cloth was woven on the hand loom: and family groups were largely self-sustaining. When the power loom was invented several persons were employed at one place in a single process. This brought these persons together for a long day's labor. When the steam engine was finally made practicable, a new mechanical world was made possible. Machinery developed rapidly. Man, its master in conception, became its slave in operation. It herded him into congested cities. It made his wife and children labor. It limited his outdoor. It spoiled the air he breathed. It changed the food he ate. It set up a new set of social relationships, created a new scheme of living, remade the law and made practicable the amassing of huge individual fortunes out of the labor of the great mass of the people who found themselves slaves to a labor system. Out of this experience we conclude that man's discoveries and inventions are the determiners of his social relations and in the end the sources out of which grow public welfare problems. The science of public welfare rests upon man's fund of scientific knowledge.

CHANGES IN CONCEPT OF LAW AND GOVERNMENT REFLECTION FROM CHANGES IN SOCIAL RELATIONS—Changes in our concept of law and government have been but reactions to social change brought about by the industrial revolution. This was inevitable since law is rule taught by customary practice. In effect the basis of the law was, first, *status:* then it became *contract:* now it is *social relations.* But we are not to forget those political reasons which colored American law so greatly from its beginning. The American commonwealths grew out of a democratic determination to shuffle off political oppression and to keep it from showing its head again. The result was a system of checks and balances in the framework of government and an intense individualism throughout the entire structure of the law. This individualism had grown from the time of King John. It was greatly accentuated by the circumstances

attending the American colonization and the upgrowth of our American communities.

General Summaries—This is the day of individualism in treatment. We are outgrowing the old practice of massing and classing humanity for purposes of identification, of relief, of correction. We are beginning to scan the degree of responsibility; the capacity; the temperament of the individual in our effort to protect or to relieve him or to defend Society against him. This change in our attitude results directly from the new knowledge of mind and personality which psychology has brought us. We discover human individuals to be different. We can no longer class them in great groups with nothing vital in common.

By the new acquisitions of knowledge we find explanation for many phenomena which we formerly attributed to supernatural causes. Witchcraft loses its mystery. The moon and the devil are discarded as causes of insanity. A profound change in the science of public welfare has come about through our discovery of the individual.

The law of charitable trusts and the attitude of government toward the granting of franchises for welfare enterprises find a place in the background of public welfare methods because they throw light upon the attitude of Society toward social problems and public welfare methods. Legal backgrounds, little known to the social worker, are a source of light and understanding to the student of public relief, child care, and the relationship now obtaining and foreshadowed for the future between governmental and voluntary enterprises in the furtherance of public welfare.

Law of Charitable Trusts—Our law of charitable trusts comes down to us from ancient days. It arose out of the practice of religious and guild benevolences, finally sanctioned by legislation and expressed for England, in that same year of Elizabeth that marked the consummation of the poor law. Though we do not acquire our American law of charitable trusts from the statute of Elizabeth, but rather from the common law practice which preceded it, we nevertheless look upon that statute as the great charter of charitable trusts in all Anglo-Saxon law. With it as a foundation we have proceeded to

add to our catalogue of worthy charitable objects as social changes have brought new social needs for such enterprises. To-day any trust not for profit or personal benefit, declared to be for the welfare of an indefinite number or group of persons, will be held a valid charitable use and protected as a precious possession of the public. Because such funds are common property of the community, they are not subject to the weaknesses of private property, such as liability to attachment; invalidity due to violation of the rule against perpetuities; liability to taxation; or lapse through non-user or the failure of the original object. Society will not let them fail.

The holder of such a charitable use is discovered to be a servant of that indefinite public who are the beneficiaries. He is not the owner, to administer the funds as he pleases. The gift itself is a fund "to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or restraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."

The charity franchise we have found to be a fair index of public consciousness regarding voluntary efforts in public welfare service. Thus far government is almost completely indifferent to the inception and continuance of so-called charitable enterprises, however beneficial or however harmful they may be. Whoso will may set out at his own election upon his own estimate of what is good for the public; and carry on vital operations in furtherance of his plan. He may carry on active campaigns for gifts from others to be applied to such purposes, and the law will not only permit him to do so but will protect him from personal liability to a high degree and will consider his funds charitable trusts. This angle of the background of public welfare service reveals the immaturity of our "science." One final aspect of the setting in which modern public welfare development is going on is found in the relationship between our governmental agencies and private enterprises in the same field. Social workers see dimly if at all how there can be any rational division of the field. They compare the two lines of

service as duplicates and competitors exercising identical functions. Some think that the voluntary enterprise is but a passing phase and will disappear as the public agency develops. Others think that the public enterprise in our form of government is ineffective and must always be so. Jealousy exists and purposeful coöperation seems remote. Clear thinking is needed.

In our analysis of this apparent parallelism we have found the governmental instrument handicapped by inflexibility due to its fixed statutory limitations; hampered by lack of a long time policy; held back by low paid personnel. The private agency is beset by a lack of legal authority in many phases of its effort; cramped by the fixed provisions of testamentary trusts under which it most frequently operates; narrowed by denominational restrictions in many instances; and released from any standard of service by public indifference and an almost total lack of governmental supervision. In addition to these drawbacks, the private agencies are numerous, often duplicating and seldom if ever coördinated effectively.

But notwithstanding handicaps in both camps, we discover constant progress in functioning on the part of the public departments and a commendable effort at interrelationship through councils and federations on the private side.

The conclusion from our analysis of this field of effort, public and private, discovers a place for each,—the public in the administration of enterprises demonstrated to concern the welfare of the whole people: the private agency in the experimentation necessary to discover welfare needs and to prove the effectiveness of methods. But since the whole field should be covered, the private agency must always supplement the public agency in the interval before statutory authorization in the performance of functions reasonably assignable to public execution.

Having viewed the history of modern public welfare administration from these several angles, our inquiry turns to modern methods of administrative organization in an effort to appraise the value of boards and departments of public welfare in their organic structure. In this aspect of our science we find statutes to be not law in the true sense but only in the sense of public law. They are decrees of government designed to order public

business with clearness and despatch. The true nature of statutes is of great importance to the social worker who must seek social legislation in many instances as the culmination or at least as an aid to the end he seeks.

The first State Board of Charity was established by the State of Massachusetts in 1863. There had preceded it a board of alien passengers and a committee of visitors to public institutions. The problem of the indigent immigrant loomed large in the urgency for this first board. In form it was a group of unpaid citizens empowered only to supervise the work of state and local institutions and to examine incoming aliens. By 1880 there were nine such boards. At the present time they exist in all but three of the 48 States of the Union.

In their development these instruments for state action were supervisory bodies but have gradually changed over into departments headed by single commissioners, with or without the unpaid board acting in an advisory capacity. The governing factor in their creation has been the control of the person, a consideration which explains the fact that those welfare operations which touched normal persons in the mass, like public education, and those dealing with physical conditions, like the public health, were left out, while those treating the person, such as relief, care of the dependent sick, the blind, the insane and the law-breaker were included in the functions of departments of public welfare.

So we find state departments centering their development around the treatment of the individual, and dealing not only with state institutions but also with the efforts of all subordinate governments, such as counties, municipalities and townships. The operating principle in the development of state systems is that administration should be decentralized in local units, while planning and policy should be centralized in the state. The foremost example of this sound planning is found in the North Carolina system. Some jurisdictions still labor under the illogical and ineffectual plan of subsidizing private effort.

As a general observation, public welfare science began with the treatment of public dependents in great unclassified groups, mostly in almshouses and houses of correction. From this un-

leavened lump special groups, such as children, the insane, the feeble-minded, the tuberculous, the vagrant, were separated and placed under special care. In this manner have arisen the constant multiplication of functions in public welfare administration.

Historically the immigration of feeble-minded inmates of English poorhouses has been a far-reaching cause of dependency in Atlantic seaboard communities in the United States. To this source must be added the high incidence of industrial breakage. High speed industry and the American trait of recklessness in matters of personal safety yield a heavy crop of cripples and dependents through loss of the breadwinner. Old age, illegitimacy, disease and mental defect combine to add up a total in public dependency astonishingly high for so young and so prosperous a country.

In the treatment of this numerous body of dependents society moves out of sympathy primarily. It takes upon itself, through government, the definite burden of seeing to it that no person shall die or suffer for lack of the necessaries of life. In the United States our entire system of public poor relief is but an adaptation of methods used in England since the sixteenth century.

Public outdoor poor relief was the first form of aid given in the American colonies. As communities grew in size and the dependents of a single jurisdiction became numerous, almshouses came into existence as the most economical means of housing all the dependents of whatever sort. In connection with the almshouse the house of correction was set up to care for the tramp and the criminal. This condition obtained down almost to the present, but latterly that process of classification has set in by which children, the insane, "contagious diseases" and law breakers have been taken from the almshouse. To-day the standard almshouse is an infirmary for the aged poor. Outdoor relief is still universally given and continues on a dole basis. The coming of mothers' aid as a special form of outdoor poor relief now shows signs of elevating the standards of regular pauper aid. Old age pensions are being cautiously tried, most notably by Pennsylvania, but thus far with heavy restrictions and no appreciable effect upon the volume of public

poor relief. The United States have no experiments to offer in social insurance and little in unemployment insurance. Industrial accident compensation on the other hand is spreading rapidly and is destined to affect public relief increasingly.

The whole problem of the law breaker, while in one sense as old as the laws that are broken, is in the science of public welfare a modern development. It was John Howard, at the end of the eighteenth century, who first suggested that incarcerating might itself be used as a mode of punishment or expiation for offenses against the law. Before his day the chief uses of jails were the detention of accused persons before trial and the safe keeping of convicts condemned to death. It was the people of the United States who pioneered in prison development. They set up the Pennsylvania system of solitary confinement, and the Auburn system of joint labor under a rule of silence. To the prison at Ghent, however, we look for sound institution planning, and to the English colony at Port Jackson in Australia for the first glimmer of reason in the problem of reformation. Both ideas were quickly developed in American prisons. The "reformatory" at Elmira embodied them and opened the way for real prison reform.

In 1878 came probation as a legal step in the care, custody and treatment of law breakers. It was followed quickly by parole and a greater flexibility in the length of the term of commitment. In the prison or reformatory itself, progress was made in the direction of reformatory influences. The greatest of these was the development in the latter institutions of regular and purposeful work.

So we find that our science in the field of penology has evolved through several definite phases. The first of these was the age of vengeance when whoso was wronged by another might wreak vengeance upon him. It was regularized private war. Then came the era of repression when he who offended against the law was hung or beheaded or burned at the stake after torture had wrung from him the confession which authority desired him to make. Third, and marking the beginning of modern times perhaps, came the stage of attempted reformation. Convicts were incarcerated for periods of time

varying with the offense and set at hard labor. They were to be punished for their crimes but they were also to be returned to normal life with a chastened spirit and some ability to carry on as self-supporting citizens. The instruments of this reform were preceptive admonition; the breaking of anti-social intent through rigid discipline; and preparation for self-support through the teaching of trades and the inculcation of a habit of work. Latterly the indeterminate sentence, coupled with parole and the extensive use of probation before commitment, have strengthened these reformatory influences and at the same time have carried the evolutionary process over into a fourth phase, namely, the period of prevention, which is the aim of the present day. In this new phase the useful methods of the past are retained and in addition, sound classification of convicts according to their mental and physical capacity for rehabilitation is under way. Psychiatric examinations serve to identify the individual as salvable or chronic. This new phase extends far outside prison walls. It seeks to discover the "pre-delinquent" through attention to the backward children in the public schools; through the juvenile court and through public care of neglected children.

Logically, as the units of correctional treatment have multiplied, the need of unification and the centralization of planning and policy in a single head has evolved the state systems which we now see almost universally.

The darkened past has extended almost to the present day in penology. In the care and treatment of the insane it has persisted even longer. The science of psychology is hardly older than the epoch making work of James who presented his treatise in 1890. Back of this new light of reason we explained insanity on superstitious grounds. We sympathized with the dement, but we looked upon him and the devil within him as enemies of Society to be chained, tortured or even burned at the stake in the interests of piety and the common defense.

The insane, when the public took notice of them, were thrown into jails and poorhouses. Often they were found chained like wild animals. Human sympathy finally revolted against

such treatment. In the second quarter of the last century asylums began to spring up. Here the poor inmate was better off than in the unclassified group. Still he was confined in strait-jackets, cribs, muffs, and other instruments of unintended torture. He was given depletory treatment exhaustive of his strength, almost certain to render his condition hopeless if persisted in for any length of time.

Gradually, as mental psychoses were recognized as the symptoms of brain disease, the nature of treatment changed from exhausting drugs and bleeding to supporting treatment. Mechanical restraints gave way to regular therapeutic occupation. Once recognized as persons who were mentally sick, it became practicable to develop sound medical treatment for them. As a fruit of this reform, expert medical knowledge is becoming a requirement in the determination of insanity, and the psychopathic hospital with an increasing volume of voluntary admissions has come into use. Research into the causes of insanity is leading the way out of the hospital into the community where preventive measures in the treatment of syphilis and the use of other expedients are imminent in the program of prevention. A similar development has taken place in the identification and treatment of mental defectives. The new psychology has discovered that sane people are not all alike; that they vary greatly in mental capacity, wherefore they show varying records in industry, in social behavior, in citizenship. At first society recognized only the obvious, the driveling idiot. Then came the imbecile into community consciousness, that weak-minded individual, not idiotic, but stupid and too dumb to get along in the world in competition with his abler fellows. Finally a more numerous group, of vastly greater consequence for evil to society, has come to light. These are the morons, folk who dwell on the border-line between feeble-mindedness of the obvious sort and such a minimum of intelligence as would permit them to make a go of life. Being so nearly normal, they present the characteristics of normal conduct. Being in fact arrested in mental development at a stage below minimum competence for getting along in the world, they prove up as failures in the record of citizenship, and are therefore to be

voted as liabilities rather than assets. They bear most of the illegitimate offspring. They contribute heavily to the ranks of professional criminals. They abound in the great army of public dependents.

Heredity is the greatest source of their defect. Our science is thus far blind to this tragic fact. We dwell in a fools' paradise of outgrown beliefs, wherefore we neglect this basic problem of human progress. We began our treatment of the feebleminded with the unclassified almshouse, the jail and the prison. Then we set up "schools" where we might give intensive training out of books to these folk whom we considered to be normal but unfortunate. Finally we have come to the stage of vocational training, teaching each ament in accordance with his capacity to receive. The institution has developed from a "school" to an extensive farm colony, where outdoor occupations abound. Outside the institution the psychiatric clinic is rapidly opening the way to friendly supervision of those who if given such kindly care need not become a burden to Society in an institution.

The tallest figure in the field of public welfare will ever be the child. In him lies hope. With him reside the potentialities for leadership in the making of each recurring layer of our human coral reef, and in him also lie the beginnings of a criminal career, a disease attacking in the productive years, a defect brought down from generations that have gone. He is the complicated laboratory in which the fact-finding processes of our science must be largely carried out. If we can deal constructively with him, the problems of adult life will lose most of their terror. We found it expedient therefore to review social progress in the treatment of the child as a topic apart from those other problems into which it ramifies.

The early New England towns indentured him when he fell dependent or his parents neglected him. When almshouses came into use, toward 1700, he was thrown in with the unclassified mass to survive ophthalmia if he could, to drudge at chores and task labor for his keep, to learn the romantic ways of the hardy tramp and sturdy beggar, and to experience his early acquaintanceship with the prostitute and the victim of venereal

disease. He ranged from the apt little fellow full of the promise of life to the dullard of regulation pauper stock, destined to an alcoholic or criminal dependency.

So hard and unkind were the processes of indenture on the one hand and the poorhouse on the other, that private effort, centering largely in the church, established the orphanage, an instrument subject to all the dangers of disease due to congregate care, and better than the almshouse only in its nearer approach to classification. The orphanage remains quantitatively the chief instrument of care to this day, though it tends to disappear from public service more rapidly than from private care where its passing is delayed by denominational interest.

Finally, Massachusetts, Wisconsin and several other states forbade the harboring of children in poorhouses. This was an awakening. The system of care set up in substitution was, however, still faulty. The state primary school, though professedly a receptacle or reservoir for the temporary housing of children pending their indenture or placement in family homes, is sound in theory. In practice there was so little follow-up that placement was little if any improvement upon old-time indenture, and the institution itself was in effect a public orphanage, a degree more purposeful than its private prototypes, perhaps.

States like Ohio and Connecticut left the solution of the almshouse child to the county with the result that county children's homes sprang up, to operate as public orphanages and stand in the way of real progress in the development of a rational system of child care, even to the present day. As a part of the individualization of treatment, the greatest advance in child care lies in intelligent placement of each dependent child in a foster family home under careful supervision by the state authorities. Where the county is used as the unit, the state, nevertheless, should head up the system in a rational plan.

For the dependent and the neglected child this is the development of the future. For the handicapped, such as the blind, the cripple, the defective, special institutions are in process of development. The hospital boarding school for the cripple, the vocational training school for the blind, and the custodial colony for the defective are all expedients now in existence, paving the

way to that preventive program which shall in a measure at least control the intake to these curative agencies.

The delinquent child has run an unhappy course of punishment, of unclassified herding with hardened offenders, of separate prison housing under the guise of reformatory treatment. At the same time that the public conscience was stirring at the plight of the insane, the unhappy durance of the young offender in American prisons aroused various communities to set up refuges. These were separate prisons or reformatories for juveniles, not much better than the larger institutions from which they sprang but superior in their potentialities for growth into a better system. From the jail and prison at the beginning of the nineteenth century the refuge came into vogue in 1825. Following it came the reformatory with a system of labor and an attempt at reformation. The great reform came when the system reached outside the walls and sought to reform the offender through probation before commitment and parole afterwards. A fourth stage, the preventive process, employs the psychiatric clinic and turns to individualized treatment.

One of the most important changes in the methods used by government to identify and readjust the individual delinquent has been the creation of the juvenile court, a case work agency with the powers of a court of criminal justice.

Through the course of centuries society has treated the individual collectively. Where harmed by obvious acts or conditions it has sought to remedy them. Little that is constructive and purposeful has ever been attempted. It is only now, in the light of new scientific knowledge of man and his environment, that the need for constructive thought and action becomes apparent. Man cannot forever delay until after the fact of human wreckage, or social harm. He must attack causes in order to prevent.

In no portion of the field of public welfare has this truth been more pointedly demonstrated than in that of the protection of the public health. Safety from epidemic disease is secured at the price of eternal vigilance by governmental authorities. In this branch of our inquiry we find government for the first time dealing with every individual in the population-swarm, normal

as well as defective, self-supporting and self-sufficient as well as dependent. The development of public health service reflects faithfully the state of scientific knowledge of disease. The first stage, prior to and also after the formation of the first state boards, until well into the second half of the nineteenth century, was that of fundamental sanitation. As disease did appear to come out of insanitary surroundings, the effort was to clean up filth, to eliminate bad odors, and to purify water supplies.

The next stage was ushered in by Pasteur and his contemporaries who established the bacterial nature of disease. Then came the era of personal hygiene. The problem then became—how is the disease transmitted?

Bacteriology and the Age of Personal Hygiene Are Now Supplemented by an Intensive Program of Conservation and Prevention—Finally, we have arrived at the present-day system of conservation and prevention, a program made up of the assembly and organization of existing knowledge; research into the causes and the nature of disease; and surveys and investigations into conditions of life to which such research applies. Here, too, we find the expediency of a community-wide program, the heading up of the system in the largest unit of government, the State.

Social Philosophy and Policy—In this brief inquiry into those forms of welfare service which the American people collectively have inaugurated, we discover the disturbing truth that we have thus far no rational philosophy of welfare protection and advancement. In defense against disease we act through fear. In the correction of law breakers we seek vengeance. In the treatment of the needy, the sick and the handicapped, our spring is sympathy. In no vital phase are we impelled by reason. The superstitions and fallacies of the past cling to us like a lingering psychosis.

The purpose of public welfare activity is the defense of Society against deteriorating, predatory and backward forces. Its chief manifestation thus far has been the practice of the humanities. We herd the poor into almshouses—those who have struggled through life with no respite from toil, together with those who are too stupid to do anything much in the

world, and those who are vicious and count upon living without work—all these together; because we think Society should do something for them. We modify our rigorous policy of capital punishment, of solitary, of inflexible prison sentences, a little because we feel a need to be kind to the oppressed prisoner. We unchain the dement and give him kindly care because of outraged sentiment: we are resolved to be kind to him. We construct orphanages, and carry out elaborate schemes of child care chiefly out of sympathy; and to this day an appeal for financial support of child care enterprises is almost invariably an appeal not to reason but to sympathy. The citizen in the modern state does not yet understand the need and the reasoning of non-military public defense.

Under the powerful leadership of the Christian Church, urging love of one's neighbor, admonishing charity, and directing kindly services to fellowmen, we have come in this present stage of human progress to an appreciable lessening of our selfishness; certainly to a marked decline in the more dramatic and cruel manifestations of it. We are growing, it appears, in that *other-mindedness* that Kidd says is the index of ethical progress.[1]

But we are acquiring new knowledge of man—his body, his mind, his reactions, his functions, the world in which he lives—all this we are discovering at a dizzying rate of speed. At an infinitely slower pace we are visualizing the usefulness of this new knowledge in the protection and advancement of man's artificial social order.

Our far-reaching system of outdoor poor relief places the means of support in the hands of those who do no work for it; presumably those who are, through misfortune, disease or other disabling cause, unable to do for themselves, but admittedly inquiring little into the full potentiality of the individual to make a go of it for himself. In so doing we open the way to pauperization, one of the self-made curses of the modern social order.

In our investigation of the rigors of the criminal law, we are still far from seeing that the true safeguard against crime

[1] See Introduction.

is preventive effort with the individual before he enters upon a criminal career, chiefly with the child and the adolescent. Our philosophy of personal immunities from community control or regulation makes of us a nation of beach-combers. We do nothing until after the wreck has occurred; whereupon, out of sympathy, we gather up the wreckage.

A simple type of this inverted social vision occurs in the case of inebriety. Saving the rational gesture of the present prohibitory amendment to the Constitution, our practice has always been to recognize in the individual an inalienable right to drink intoxicants to excess; to be drunken as continuously as he pleases; to abuse his wife and family, and to neglect their proper support and advancement; to idle away his time and come to public dependency through the habit of drunkenness. Our only qualification of the extreme exercise of such rights has been our laws forbidding disturbance of the peace, assault, and neglect of family support *where he has a job and an income sufficient.* We have recognized as a legitimate business the manufacture and sale of intoxicants designed for no other purpose than to make profits out of the individual who likes liquor, and certain to result in nothing but social damage. We even divide the profits by taking a substantial rake-off in the form of license fees and internal revenue. When the individual has become thoroughly debauched by this combination of the exercise of his sacred right and the business rights of manufacturer and vendor, the community calls for no reckoning from the causes of the catastrophe, but turns about and gathers this human flotsam into jails, houses of correction, and industrial farms, where it labors with all the arts of modern medicine to restore them physically so that they may be let out soon, theoretically to resist the temptation which Society has pushed under their noses, but practically to go back to the gutter. Their children are benevolently cared for in Homes or placed out in foster homes, or given into the custody of the government. In this instance, as in many another, Society seems convinced that it is better to let the citizen do as he pleases even though he go to the devil in the process and drag the public welfare after him.

Of identical caste is our reasoning regarding the public

health. We know well the baneful and far-reaching effects of syphilis and gonorrhea. We see these diseases ramify into insanity, into the beastly infection of innocent spouses; into infant blindness. We have crèches, pensions for the blind, hospitals, clinics, dispensaries, asylums—wherever the tragic progress of these diseases throws up a lateral moraine we have emergency receptacles to catch the detritus. We have almost everything except the courage to drive straight at the causes of the evil and combat them there. This courage we lack because we still have the feeling that it is better to allow the individual to exercise his personal liberty to come and go without let or hindrance from the community, even though in so doing he leave a swath of tragic horror and unspeakable death behind him.

But a new light is breaking upon these old presuppositions of ours. We are beginning to sense better and more rational definitions of personal liberty. Modern urban life forces us to readjust our ideas of the relationship between the State and the individual. The new sciences afford us a better understanding of causes and consequences in human affairs. It remains only to continue our research and to apply sensibly the knowledge we already have.

As decades pass and the experiences of to-day become the crises of to-morrow, we shall perforce see how rapidly we must abandon our old lump individualism for a selective process in justice which shall consider the welfare of the entire population-swarm as paramount to the interests of the individual wherever they clash. The coming years will show with alarming rapidity how extensively man must organize his social defense system. Meantime let us turn again to that disturbing illustration of Huxley's and consider with what husbandry man is thus far tending his garden of civilization, guarding the puny branches and delicate flowers of his age-long cultivation against the hardy, cruel gorse from nature's moors without. How jealously does he keep watch against encroachment? And in that day when sustenance falls behind numbers and his cultivated patch can no longer support its burden, how likely is he to overlook the breach in the wall? In that hour will the

forces of untamed nature swarm up and over the defenses, choking the weaklings of human culture in their eager struggle for a place in the sun: unless man, with his superior knowledge of nature's forces; with his scientific wisdom; so far gains the mastery of his own chronic mysticism as to set up in his artificial system of ethics a valid selective control upon the increase of his kind beyond the capacity of the earth to sustain him.

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